

**MANAGEMENT REVIEW  
OF THE PIKE PLACE MARKET  
PRESERVATION AND DEVELOPMENT  
AUTHORITY**

**DECEMBER 8, 1999**

December 8, 1999

The Honorable Paul Schell  
Seattle City Councilmembers  
City of Seattle

Dear Mayor Schell and City Councilmembers:

The attached report summarizes the Office of City Auditor's conclusions regarding certain aspects of the management of the Pike Place Market by the Pike Place Market Preservation and Development Authority (PDA), a public corporation chartered in 1973.

Our main conclusion is that the policies adopted by the PDA to carry out its Charter mandates are reasonable. Specifically, we concluded that the PDA's policies regarding the importance of fresh produce on the Market daystalls and its commercial lease policies and practices are reasonable and in accord with its Charter.

We also concluded that the PDA should continue to work to improve communications with and among its many tenants. In particular, we concluded that the PDA Council should have taken more time to inform and discuss, within the Market community, the changes it proposed to the Hildt Agreement in 1998.

During this review we attended over 50 meetings of the PDA Council and its committees, the Market Constituency, the Market Historical Commission, and PDA staff and commercial tenants. We conducted over 60 interviews of Market tenants, PDA Councilmembers and staff, and other members of the "Market community". We sought feedback and comments from the former and acting Executive Directors, the PDA Council Chair, the Market Constituency Chair, and the City's Public Corporations Coordinator. The process was time-consuming but we believe the investment has given us a relatively thorough understanding of the Market and its major issues. We hope it has resulted in a report that can be accepted, understood, and used by all, to the benefit of the Pike Place Market.

We appreciate the cooperation of the PDA Council and staff, Market Constituency, Pike Place Market Merchants' Association, Daystall Tenants' Association, United Farmers' Coalition, Market Historical Commission, City Councilmembers, Department of Neighborhoods, and the merchants and daystall tenants of the Pike Place Market. Questions regarding this report may be directed to me at 206-233-1095, or to auditor Jerry Stein at 206-233-1091.

Sincerely,

David G. Jones  
Deputy City Auditor

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**Office of City Auditor Report Evaluation Form**

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Report: **Management Review of the Pike Place Market Preservation and Development Authority**

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E-mail: [auditor@ci.seattle.wa.us](mailto:auditor@ci.seattle.wa.us)

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# Office of City Auditor

**MANAGEMENT REVIEW  
OF THE PIKE PLACE MARKET  
PRESERVATION AND DEVELOPMENT AUTHORITY**

**December 8, 1999**

**Project Manager: Jerry Stein**

City Auditor: Susan Cohen  
Deputy City Auditor: David G. Jones

Auditors: Susan Baugh  
Anthony Foster  
Susan Kraght  
Eileen Norton  
Jong-Koo Park  
Linneth Riley-Hall  
Scottie Veinot

Administrative Specialist: Carolyn Yund

**City of Seattle**

1100 Municipal Building  
Seattle, Washington 98104-1876

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## **EXECUTIVE SUMMARY**

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### **BACKGROUND**

The Pike Place Market Preservation and Development Authority (PDA) was chartered by the Mayor of Seattle in 1973 to redevelop, own, and manage the Pike Place Market. The PDA Charter places responsibility for “management of all PDA affairs” in the PDA Council. The Council consists of 12 volunteer members who serve four-year terms. The Council hires an Executive Director to conduct day-to-day management and hire staff to operate the Market.

The PDA’s mission, according to the Charter, is to ensure that the traditional character of the Market is preserved. Within that context, the Charter directs the PDA to initiate programs to: expand food retailing in the Market, especially the sale of local farm produce; preserve and expand the residential community, especially for low-income people; and promote the survival and predominance of small shops, marginal businesses, thrift shops, arts and crafts, “and other enterprises, activities, and services that are essential to the functioning of the Market.”

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### **PURPOSE**

The public, the media, and the City Council have recently drawn attention to Seattle’s oversight of its Preservation and Development Authorities. The Pike Place Market PDA became the subject of such attention in 1998 when it proposed changes to a contract with the City that provided parameters for certain aspects of Market management. The contract, known as the Hildt Agreement, was executed in 1983. It was to expire in 1998 but would automatically renew for 5 more years unless the PDA or the City requested otherwise. Several City Council members asked the City Auditor to review some aspects of the PDA Council’s management of the Market, including the Hildt Agreement change process and the PDA’s commercial lease policies and practices, which have been criticized by some Market merchants. The City Auditor agreed to examine those aspects of the PDA’s operations.

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### **OBJECTIVES, SCOPE, AND METHODOLOGY**

Our objectives were to summarize and evaluate 1) recent efforts of the PDA Council and staff to satisfy the PDA Charter’s mandates regarding food retailing and other commercial retail functions, in the context of its mission to preserve the Market’s historical character; and 2) the PDA’s incorporation of the Charter’s public process requirements into those efforts, and to recommend improvements as appropriate.

We began this review by meeting with the PDA’s Executive Director<sup>1</sup> and management team in August 1998. We then interviewed Market commercial tenants and farm and craft vendors, PDA Council members, and representatives of Market organizations. Next, we observed the PDA’s public review processes for changing the Hildt Agreement and the rules regarding

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<sup>1</sup> The person who held the Executive Director office when we started this review resigned effective July 1999. Nearly all of our fieldwork had been completed at that time. Therefore, we will refer to the former Executive Director as “Executive Director” throughout this report.

Market daystall vendors. (The daystalls are the 4-foot tables located in the Market's Main and North Arcades, on the west side of Pike Place, rented on a daily basis to producer-vendors of produce, flowers, and arts and crafts.) We also interviewed PDA staff and reviewed documents regarding other recent PDA efforts to expand food retailing, especially the sale of local produce. Finally, we examined the PDA's commercial lease policies and provisions. We interviewed PDA staff and other commercial real estate personnel, and compared the PDA's lease terms and policies with those of other commercial landlords and public markets.

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## CONCLUSIONS

***The PDA's financial position is strong, and the PDA has dedicated significant resources to capital repairs and improvements.*** (Page 8)

The PDA's financial position is strong, as represented in its annual financial statements. Operating revenues have exceeded expenses by roughly \$1.5 million--before debt service, capital expenditures, and reserves--each year since 1993. The net budget surpluses have been used mostly to supplement the PDA's capital reserve and operating reserve funds, which were created in 1991.

The PDA greatly increased its annual capital budget during the 1990s to preserve the Market's historical structures and address community needs. Some of the largest and most visible capital projects completed in the last ten years include: replacement of the windows and refurbishment of the exterior of the Corner Market building; rehabilitation and expansion of the South Public Restrooms; refurbishment of the Market Center clock sign; and structural repairs to wooden columns and wooden beams in the Main Arcade and on the Desimone Bridge.

The PDA commissioned a comprehensive assessment and long-term projection of its capital conditions in 1992. Since then the PDA has developed 5-year capital plans, which it updates each year. The 1998-2002 plan anticipates total expenditures of \$3.5 million for about 65 separate capital improvement, repair, and equipment replacement projects, ranging in expected cost from \$3,500 to \$328,000.

***The PDA's interpretation of the PDA Charter and the Historical District ordinance regarding the importance of local produce in the Market, its conclusion that local produce is currently underrepresented in the Market, and the programs and policies it has implemented to try to correct the perceived imbalance between produce, flowers, and arts and crafts in the Market, are reasonable.*** (Page 11)

The PDA Charter directs the PDA to consider the effect of its policies on the Market community, but the PDA's overriding responsibility is to preserve the Market's historical structures and character for the citizens of Seattle. The Charter's mandates--the citizens' expectations for the Market's operation--direct the PDA to ensure that the traditional character of the Market is preserved, and to focus on meeting the needs of local producers, consumers, and residents.

The Market began in 1907 as a market for local farmers to sell their produce directly to local residents. The amount of fresh produce sold there has declined drastically since it peaked in the 1930s. In recent years, other farmers' markets have drawn farmers and customers from Pike Place Market, and supermarket produce departments have become increasingly competitive.

The 1971 ordinance that established the Pike Place Market Historical District, which includes all of the PDA's property, notes that the District "promotes local farming while making available local produce to shoppers and others." Based on the PDA Charter and the Historical District ordinance, the PDA has concluded that it must try to preserve the Market's importance as a place for farmers to sell local produce to local residents. The PDA Council believes that fresh local produce is underrepresented in the Market, and that it is obligated to try to correct this imbalance.

During the 1990s the PDA undertook many initiatives and proposed a number of Daystall Rules changes designed to further the sale of farm produce. In 1997 it implemented two ambitious programs, Organic Farmer Days and the Market Basket, that have shown promise in bringing more farmers and local produce customers to the Market.

In 1998 the PDA proposed, and eventually enacted, changes to the Hildt Agreement and the Daystall Rules and Regulations that will allow PDA staff to give some or all produce farmers additional selling space under certain conditions. (The Hildt Agreement is a contract with the City that sets parameters for PDA management of the Market daystalls.) The PDA expects that allowing produce farmers to occupy more space will improve their chances to sell enough produce to make the Market a viable sales outlet, and that the increased visibility and availability of farm-fresh produce will attract local residents and downtown workers to shop more frequently at the Market.

Since craft vendors are allowed to sell from any farm-priority daystalls that are not used by farmers, on days that produce farmers are given additional space, craft vendors will have fewer of those spaces—considered by many to be better spaces—available for their use. The PDA concluded that craft vendors who would otherwise be able to sell in the Market would rarely be excluded as a result of the new policy. The Office of City Auditor expanded on the PDA's analysis and confirmed the PDA's conclusion, but noted that some vendors who usually get covered spaces would be forced to sell from uncovered spaces during spring and fall; in bad weather this would effectively exclude them from the Market. The number of vendors so affected would depend on how many farmers qualified for and requested an additional table on any particular day. The final rules adopted by the PDA minimize the chances that any vendor will be excluded. (The Office of City Auditor issued a memorandum in February 1999 describing its analysis to City Councilmember Steinbrueck; see *Appendix IV*.)

The PDA has also sought to boost overall Market sales to local residents. In 1998 it hired a consultant to review the Communications and Marketing Department. The Department generally followed the consultant's marketing recommendations in its 1999 Marketing Plan. It has expanded and intensified its efforts to encourage local residents to patronize Market farmers, restaurants, merchants, and craft vendors. In February 1999 the PDA implemented a one-hour free parking program that appears to be attracting local shoppers to the Market.

***The PDA should be more diligent about observing the spirit, as well as the letter, of the Charter's public process requirements.*** (Page 19)

The Office of City Auditor believes the PDA should have allowed more time for public process when it proposed to change the Hildt Agreement in 1998. The Agreement, executed in 1983, was to renew automatically on 01 August 1998 unless the PDA or the City notified the other party 30 days in advance to the contrary. The PDA did not start the review process until after it completed the annual review of daystall rules in late March 1998. The PDA staff drafted proposed changes and the PDA Council created three study groups to review the PDA staff's proposal. The three groups had about one month to study and comment on the staff's proposal; all three reported that this was not enough time to review the changes thoroughly. By 23 June—the date of the last regular PDA Council meeting before the notice deadline—many daystall farmers and craft vendors were opposed to the changes, and many were unsure how the changes would be implemented and how their businesses would be affected. Nonetheless, the Council voted, 8-4, to notify the City of its intent not to renew the Agreement without change and to submit its proposed new agreement to the Seattle City Council.

The City Council declined to accept the proposed new agreement without additional public review. The PDA agreed to abide by the expired Agreement's terms for up to nine more months while the PDA Council and staff conducted additional public meetings and published more responses and explanations to community questions. The Market Constituency sponsored a process of community dialogue; although the daystall factions were not able to reach consensus on several key issues, they proposed alternative language and gave the PDA Council better feedback than they had received previously. These processes increased the community's understanding of the issues and resulted in significant additional changes to the agreement. The new proposed agreement enjoyed improved support in the Market community and the PDA Council. The City Council approved the new "Licata-Hildt Agreement" in February 1999.

In contrast to its initial Hildt Agreement change process, the PDA demonstrated patience and flexibility in its annual review of Daystall Rules and Regulations in 1999. The City Auditor believes the process clearly satisfied the Charter's relevant public process requirements. Continued attention to thorough public review will improve the PDA Council's relationship with the Market community and with other citizens who are interested in the Market.

We believe the PDA's relationship with the Market community would improve if it were more willing to acknowledge when its actions or processes turn out to be less than ideal, as with the initial Hildt Agreement revisions public process. Although PDA Councilmembers and staff have acknowledged that they probably should have proceeded differently, some PDA communications to the daystall community defended the PDA's process without accepting any responsibility for problems.

***The PDA's commercial lease policies and practices appear consistent with its Charter mandate.*** (Pages 34)

We believe the PDA is upholding its Charter mission to "promote the survival and predominance of small shops, marginal businesses, thrift shops, arts and crafts, and other enterprises, activities, and services which are essential to the functioning of the Public Market", within the context of preserving the Market's historical character. If the Market is to survive, and thrive, in the face of increasing competition from other farmers' markets in the region and retail

shopping destinations in Seattle's Central Business District, the PDA must strike a balance between the Market's original old-world market character and modern business practices. The PDA's commercial lease guidelines and practices reflect a conscious effort to improve the Market's business operations in ways that are least likely to affect its historical character, especially the character perceived by citizens and customers.

The character of the Market's landlord-tenant relationships has changed: In the early days of PDA administration, Market rental rates were lower, leases were for longer terms, and lease documents were less complex, with fewer operating restrictions and requirements. But the Market of the 1970s was in turn a far cry from the first freewheeling day in 1907 when farmers sold produce, unregulated, from their wagons on Pike Place. The PDA's commercial lease terms and operating requirements do not appear to be unusual or unrealistic for the current downtown Seattle commercial market or for other public markets we examined. Some Market merchants believe the PDA's rental rates are higher than they should be to be consistent with the Charter's mandate to support owner-operated businesses. It is clear that PDA rental rates today are closer to fair market value than they were in the PDA's early history. However, the PDA is not obligated by its Charter to provide any of its tenants with below-market rents. Demand for commercial space in the Market remains high; vacancies are rare in most parts of the Market.

The PDA's Commercial Lease Guidelines express a policy of extending below-market rental rates only to start-up businesses, "character-defining" businesses, and businesses or organizations that provide services to low- and moderate-income persons. Owners of new Market businesses we contacted were generally happy with their terms and with the helpfulness and support of PDA staff.

As of November 1999, 74 percent of the PDA's commercial and office tenants had current multi-year leases or were in lease negotiations with the PDA. PDA staff believe the level of holdover (month-to-month) tenancies has been about the same over at least the last nine years; however, they do not keep track of this statistic and do not keep records that would allow them to calculate past ratios of leases versus holdover tenancies.

Only 38 tenant spaces--17 percent of all commercial spaces--were being kept on month-to-month status by the PDA because of pending construction, poor sales performance, or violations of lease terms or other operating requirements. PDA staff told us they have never held any tenant on month-to-month status while searching for a replacement tenant for their premises, and that they have never increased a holdover tenants' rent by 50 percent, as the lease allows them to do. They also said that the PDA has refused to renew leases with fewer than 10 tenants in the last 10 years, and that there were multiple reasons for non-renewal in each case.

***PDA communications with commercial and daystall tenants could be improved.*** (Page 44)

Nearly all the merchants and vendors we interviewed felt that communications between them and the PDA could be improved, and that PDA management should be more visible in the Market. The consultants who reviewed the PDA's Communications and Marketing Department reached the same conclusions from their community interviews.

The PDA should make sure that its communications with tenants do not appear threatening or demeaning. Perceived insults live a long time in the Market community's collective memory. The marketing consultants recommended that the Communications and Marketing Department be used as an internal consultant to the PDA management team and assist other departments with tenant communications.

Most Market tenants do not routinely communicate with tenants in other areas of the Market. As a result, they sometimes criticize the PDA for not implementing suggestions they believe would work for them and their close neighbors--e.g., closing all or part of Pike Place to auto traffic--not realizing that their "solutions" would create problems for tenants in other parts of the Market. Then they conclude that the PDA is not taking their comments and suggestions seriously.

The PDA has tried to address this problem, with limited success. The PDA publishes monthly newsletters for the daystall, residential, farmer, and merchant communities, and the Executive Director prepares a monthly summary of current events in the Market. The merchant newsletter is distributed with monthly rent statements, and the PDA mails the Executive Director's summary to anyone who asks to be put on a mailing list. In 1998 the Executive Director and staff began conducting quarterly meetings with merchants in each Market building--a technique they had tried several years ago--but as before, they have not been well attended. Later this year the PDA plans instead to conduct several Market-wide (instead of area-specific) meetings at different times, to increase Market-wide communication among merchants and to allow more opportunities for merchants to attend.

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## **OTHER ISSUES**

### **PDA Compliance with the State Open Meetings Act (Page 47)**

At its March 1999 meeting the PDA Council called an unplanned executive session to discuss a Market trademark issue they thought might lead to litigation. (The Council took no action during the session.) We subsequently determined that this was probably an inappropriate use of executive session under the state Open Meetings Act. We informed the Executive Director and the chairperson of the PDA Council of our opinion, and asked them to seek their legal counsel's opinion. We also recommended that the Council and its committees have a copy of the relevant portion of the Act at their meetings, and that the chairperson specify for the record which exception they are invoking when calling an executive session.

The Executive Director promptly conferred with the PDA's legal counsel, and confirmed that the executive session was not in compliance with the Open Meetings Act. The Executive Director and the Chairperson had an attorney discuss the Open Meetings Act at the April meeting of the PDA Council Executive Committee. The PDA Council also adopted our recommendations regarding the use of the Act at its meetings.

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## PIKE PLACE MARKET PDA COUNCIL AND CONSTITUENCY RESPONSES

The PDA Council's response generally concurs with our conclusions. The Council acknowledges that communications with tenants need to be improved. It expresses some disagreement with our basis for concluding that more time should have been spent on the Hildt Agreement revision in 1998: "We continue to feel that the central issue was opposition to the provision to allow a third table to farmers rather than the amount of time allowed for public process." The complete response is reproduced as *Appendix V*.

The Market Constituency's response is also supportive. The Constituency notes that our report "highlights several problem areas which should give Market management a clear outline of needed improvements." The complete response is reproduced as *Appendix VI*.

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## INTRODUCTION

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### PURPOSE

The public, the media, and the City Council have recently drawn attention to Seattle's oversight of its Preservation and Development Authorities. The Pike Place Market PDA became the subject of such attention in 1998 when it proposed changes to the Hildt Agreement, a contract with the City that for the last 15 years provided parameters for certain aspects of Market management. Several Councilmembers asked the City Auditor to review some aspects of the PDA Council's management of the Market, including the Hildt Agreement change process and the PDA's commercial lease policies and practices, which have been criticized by some Market merchants. The City Auditor agreed to evaluate whether certain PDA's policies and practices are in compliance with its Charter.

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### AUTHORITY FOR THIS REVIEW

The Pike Place Market Preservation and Development Authority (PDA) is a non-profit public corporation established by the City of Seattle pursuant to state and local laws. State law outlines cities' oversight role for public authorities they create:

Any city, town, or county which shall create a public corporation, commission, or authority ... shall provide for its organization and operations and shall control and oversee its operation and funds in order to correct any deficiency and to assure that the purposes of each program undertaken are reasonably accomplished.<sup>2</sup>

Seattle Municipal Code (SMC) Chapter 3.110 describes the powers and duties of PDAs as well as the City's oversight role. The City's Strategic Planning Office employs a Public Corporations Coordinator who monitors all of Seattle's PDAs. In addition, SMC Chapter 3.40, which describes the office of City Auditor and its powers, specifically provides that "the City Auditor shall have the power to ... [a]udit the affairs of the City's public corporations established pursuant to Chapter 3.110."<sup>3</sup>

This was not the first time the City's legislative branch reviewed aspects of the Pike Place Market PDA. In 1980 the Director of Legislative Audits published *Completion of the Pike Place Urban Renewal Project and the Financial Condition of the Pike Place Market Preservation and Development Authority*.<sup>4</sup> That review had two purposes: "(1) a review of when the City's involvement in the Project would end, and (2) an analysis of the current and future financial position of the Pike Place Market Preservation and Development Authority."<sup>5</sup>

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<sup>2</sup> Revised Code of Washington, Section 35.21.745.

<sup>3</sup> Seattle Municipal Code, Section 3.40.20.

<sup>4</sup> The position of Director of Legislative Audits was a predecessor to the Office of City Auditor.

<sup>5</sup> City of Seattle, *Completion of the Pike Place Urban Renewal Project and the Financial Condition of the Pike Place Market Preservation and Development Authority*, July 1980, 1.

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## **OBJECTIVES, SCOPE, AND METHODOLOGY**

Our objectives were to summarize and evaluate: 1) recent efforts of the PDA Council and staff to satisfy the PDA Charter's mandates regarding food retailing and other commercial retail functions, in the context of its mission to preserve the Market's historical character; and 2) the PDA's incorporation of the Charter's public process requirements into those efforts.

We began this review by meeting with the PDA's Executive Director and management team. We then interviewed Market commercial tenants and daystall vendors, PDA Council members, City Council members, and representatives of Market organizations including the Market Historical Commission, Market Foundation, Merchants' Association, Daystall Tenants' Association, and United Farmers' Coalition. We developed the objectives of our review as the interviews revealed areas of greatest concern about the Market.

We observed the PDA's process for changing the Hildt Agreement between the PDA and the City, and the 1999 Daystall Rules and Regulations review process. We also interviewed PDA staff and reviewed documents regarding other recent PDA efforts to expand food retailing, especially the sale of local produce. We attended more than 50 meetings of the PDA Council, its subcommittees, and other Market organizations, as well as PDA staff meetings with commercial and daystall tenants.

We also examined the PDA's standard commercial lease document and leasing guidelines. We interviewed PDA staff and other commercial real estate personnel, and compared the PDA's lease terms and policies with those of other markets and commercial landlords. We examined a sample of tenant leases to verify the accuracy of the PDA's records regarding leases and month-to-month tenancies. We also interviewed PDA staff and collected documents to resolve specific questions about particular tenant leases. We did not attempt to judge the appropriateness of rent amounts in the Market.

We did not address the Charter's residential and low-income services mandate. We also did not examine the circumstances that led to the PDA's announcement in October 1998 that at least \$29,000 in daystall rental receipts had gone unaccounted for since 1992. The PDA worked with an independent accounting firm and the State Auditor's Office, which audits the PDA's financial statements and internal control systems annually, to investigate and correct that problem. The State Auditor's Office issued a report in October 1999 that concluded that at least \$173,875 was embezzled since the beginning of 1996. The King County Prosecutor's Office is currently investigating the incident.

This audit was conducted in accordance with generally accepted government auditing standards.

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## **CRITERIA**

The state law quoted above provides a "reasonableness" standard for cities to broadly evaluate the activities of their PDAs. The specific criteria we used in this review are established in the PDA Charter, which defines the PDA's mission and sets several specific mandates for its management of the Market:

[T]he PDA, as a public trustee with the mission to ensure that the traditional character of the Public Market is preserved, is authorized to perform the renewal, rehabilitation, preservation, restoration, development, and non-profit management of structures and open spaces ... in a manner that affords a continuing opportunity for Public Market farmers, merchants, residents, shoppers, and visitors to carry on their tradition and market activities. In addition to upgrading structures and public amenities in and around the Market Historical District, the PDA will initiate programs to expand food retailing in the Market Historical District, especially the sale of local farm produce; to preserve and expand the residential community, especially for low-income people; to promote the survival and predominance of small shops, marginal businesses, thrift shops, arts and crafts, and other enterprises, activities, and services which are essential to the functioning of the Public Market.

The PDA shall provide a structure within which all public agencies, private groups, organizations, and individuals whose concerns and interests relate to the preservation of Seattle's Public Market area may work together to accomplish the above purposes and goals.<sup>6</sup>

Another portion of the PDA Charter provides more detailed directions regarding public review of PDA actions. Extensive public notice and process requirements must be met for most transactions involving real estate or other assets (except tenant leases), and for demolishing, substantially altering, or changing "the established primary use" of all or part of any building in the Market Historical District. Other actions are subject to less stringent public process requirements, which are reproduced and discussed later in this report.

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## **BACKGROUND**

The main quasi-government entities in the Market's operating environment are the Pike Place Market PDA and the Market Historical Commission. The PDA owns twelve buildings in the Market Historical District; it is exclusively responsible for managing its Market buildings and common areas. The Historical Commission is a regulatory board of the City that must approve the use and design of all businesses and buildings within the Historical District. Both the PDA, by Charter, and the Historical Commission, by ordinance, seek to participate in and influence planning in the areas surrounding the Market to ensure compatible development.

Other active organizations within the Market include the Market Foundation, a private non-profit organization dedicated to raising funds to preserve the Market and support the Market's services to low income people; and the Merchants Association, a private association of Market merchants and vendors designed to promote the business and business interests of the Market. There are also three organizations registered as special interest organizations with the PDA: the Daystall Tenants Association, the United Farmers Coalition, and the Friends of the Market.

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<sup>6</sup> *Charter of the Pike Place Market Preservation and Development Authority, Article IV.*

## **The Pike Place Market Preservation and Development Authority**

The Mayor of Seattle issued a charter to the Pike Place Market PDA in 1973, to serve as caretaker and steward of the Pike Place Market. The PDA Charter establishes a PDA Council of 12 volunteer members, and a Constituency. The Mayor must approve changes to the PDA Charter.

The PDA owns about 80 percent of the property in the nine-acre Pike Place Market Historical District, which is roughly bordered by First Avenue on the east, the Highway 99 viaduct on the west, and Virginia Avenue on the north; the south boundary is mid-block between Pike and Union Streets. The PDA owns or operates 13 buildings in the District, housing 220 commercial retail and office tenants, 184 four-foot daystall spaces within the covered arcades and over 60 outside spaces and areas for temporary set-up, 192 low-income and 81 low cost and market-rate residential units, a 535-space parking garage, and four surface parking lots with capacity for 208 cars. (*Appendix I* is a map of the Pike Place Market.) The PDA has no authority over other property owners in the District. Sometimes the PDA coordinates with them or their tenants on Market security, advertising and other promotions.

### PDA Council

PDA Council members serve staggered four-year terms, without term limits. Three members are nominated each year, one each by the Mayor, the Market Constituency, and the PDA Council. All nominations are subject to Seattle City Council approval.

The PDA Charter places responsibility for “management of all PDA affairs” in the PDA Council. The Council sets policy, and hires an Executive Director to manage routine Market operations. The Council reviews the Executive Director’s performance each year.

The PDA Council normally meets once each month. It has six standing subcommittees, which also meet monthly: the Executive, Finance, Farm, Marketing, Property Management, and Downtown Committees. The Property Management Committee probably has the most visible role in Market management, since it oversees all aspects of commercial and residential property management, including the daystalls. It typically holds additional meetings when discussing significant changes to Market rules and regulations.

### PDA Staff

The Executive Director is responsible for managing the PDA’s overall planning, operations, and development, and for establishing community and external relations consistent with the PDA Council’s policies. The Director hires and leads a six-member management team, which consists of an Executive Assistant and directors of four staff departments: Property Management, Operations and Construction, Finance and Administration, and Marketing and Communications. The PDA’s 1999 budget includes about 85 full-time positions (including the Executive Director). An organization chart is attached, as *Appendix II*. *Appendix III* is a chart describing the functions performed by each department, as well as the Market Foundation (described below).

On 14 June 1999, the Executive Director announced she was resigning, effective July 31st, to accept another job. The PDA Council created a 21-member Executive Search Committee, composed mostly of persons from the Market community and other Seattle PDAs, to help

gather public input, develop a profile of the “ideal candidate”, review resumes, and interview candidates.<sup>7</sup> The PDA Council hired a new Executive Director in November 1999.

The PDA’s Director of Property Management also announced his resignation on June 14th, effective July 17th. The new executive director will hire his replacement. The PDA’s Manager of Business Development is serving as interim Director of Property Management.

### Market Constituency

The Constituency was established in the PDA’s Charter, pursuant to SMC 3.110. Membership is open to all Washington residents who are at least 16 years old; annual dues are \$1. There were 450 members at the end of 1998. (Members can join at any time, so membership grows over the course of each year.) The Constituency holds a general membership meeting and an executive board meeting each month in the PDA’s offices. Attendance at routine meetings ranges from 10 to 25 members, but officer elections and controversial agenda issues can attract over 100 members.

The PDA Charter cannot be changed by the PDA Council without the Constituency’s concurrence.<sup>8</sup> The Constituency’s concurrence is also required when the PDA selects an independent auditor or the PDA Council proposes amendments to certain of its Rules and Regulations.

The Constituency maintains a small office in the Market’s Main Arcade. In the 1998 PDA budget the Constituency received \$4,750 for mailing, copying, telephone, and minute-keeping expenses.

### **The Market Historical Commission**

Following a public vote in 1971 to “Save the Market” from proposed redevelopment, the City of Seattle purchased the Market buildings and created the Market Historical District. It also established the Market Historical Commission to oversee the preservation of structures and uses in the District. The Commission’s approval is required for any substantive change in the use or design of buildings and signage in the District. This applies to the PDA and other property owners as well as their tenants.

The 12-member Commission is composed of two members each from the Friends of the Market, Inc., Allied Arts of Seattle, Inc., and the Seattle chapter of the American Institute of Architects; two owners of property within the District; two Market merchants, and two District residents. The Mayor appoints the members to three-year terms. The Commission and its Use Review and Design Review subcommittees meet twice each month, except in November and December. The Commission works closely with the City’s Department of Neighborhoods, which provides one staff person to serve as Commission Coordinator (in addition to other work).

The City’s Department of Design, Construction and Land Use (DCLU) is the official enforcement mechanism of the Market Historical Commission. DCLU personnel respond to Commission requests for enforcement but do not routinely inspect for violations.

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<sup>7</sup> Auditor Jerry Stein is a member of the committee.

<sup>8</sup> Constituency concurrence is defined in Article VIII, Section 3, of the PDA Charter.

## **The Market Foundation**

The Market Foundation was formed in 1982. It is an independent, private, non-profit organization that works with the PDA to preserve the traditions and diversity of the Pike Place Market neighborhood. It does this by helping identify and plan program and fund-raising responses to address social needs of the Market community, particularly its low-income citizens, and to preserve the traditional character of the Market. Among the programs it supports are:

- the Pike Market Medical Clinic;
- the Pike Market Child Care and Preschool;
- the Pike Market Senior Center;
- the Downtown Food Bank;
- the Market Fresh coupon program (low-income Market residents can redeem these for Market produce);
- the FoodLink program (distributes unsold Market produce to other Seattle food banks and meal programs); and
- the Heritage Center of the Market.

The Foundation also maintains a Market Fund to provide for capital and special project needs in the Market and surrounding area, and has conducted capital fund-raising campaigns on behalf of the PDA for historic preservation and the Market social service agencies for space and equipment improvements. In return, the PDA donates office space, utilities, reception, and payroll management services, and pays the salary of the Foundation's Executive Director.

## **PDA History, 1973-1990**

From the early 1970s through the early 1980s, the City's Pike Project Office in the Department of Community Development, the Market Historical Commission, and the PDA were actively engaged in planning, designing, and implementing rehabilitation of Market buildings within the then seven-acre historic district, and development within the larger 22 acre Pike Place Urban Renewal Project Area. The City's Pike Project Office had the lead role in developing the Urban Renewal Plan and Design and oversaw acquisition of property and negotiation of plans for rehabilitation or development with the PDA and several private developers, both in and outside the historic district. Between 1973 and 1980 the City acquired, and transferred to the PDA, eleven buildings within the Market historic district. The PDA managed the rehabilitation and operation of those buildings.

Rehabilitation was nearing completion in the early 1980s, when federal funds to support the final projects dwindled. The PDA pursued the sale of historic redevelopment tax credits and other tax benefits—a common practice at the time—as a means of raising the funds needed to complete the rehabilitation work. Over the period 1981-1983, the PDA entered into real estate and management agreements with five limited partnerships, collectively known as The Urban Group. The proceeds of these agreements enabled the PDA to complete the final rehabilitation work. The agreements functioned as intended, without any involvement of the partnerships in the management of the Market until the late 1980's.

As a result of federal tax code changes made in 1986 and 1987 and set to become effective in 1989, as well as improvements in the downtown Seattle real estate market, the financial incentives for The Urban Group changed. The investors began to demand greater profitability

from the Market in late 1988. They attempted to refinance debt and pull out equity, and directed the PDA to raise income to cover the new debt. When the PDA refused to pass-through 100 percent of its "common area" costs to Market tenants, The Urban Group claimed the PDA owed them \$8 million and sought to remove the PDA as the manager of the Market.

In April 1989 the PDA and the City of Seattle filed suit against The Urban Group to prevent the investors from replacing the PDA as manager and to establish the primacy of the Historic District Ordinance and the PDA Charter in the management of the Market. The Urban Group countersued for control of the Market and for the \$8 million it alleged the Market would have made if it had been more profitably managed. The Citizens' Alliance to Keep the Pike Place Market Public, an organization formed to save the Market a second time, also joined the lawsuit against The Urban Group.

In October 1990 a King County Superior Court judge issued a key ruling: the PDA was specifically created to manage the Market, and it cannot contract out or delegate that responsibility. After another year the lawsuits were settled and clear title to the Market properties involved was returned to the PDA.

Following the settlement agreement, the PDA Charter was amended with the intent to ensure that the Market would never again be "sold". The PDA's power to buy and sell real estate was made subject to specific limitations, and extensive public notice and analysis requirements were established for major actions affecting PDA-owned Market properties.

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## **FINDINGS AND RECOMMENDATIONS**

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### **INTRODUCTION**

The Market is physically and operationally a large and complex place, with diverse business and logistical interests. The 12 volunteers of the PDA Council--along with the Executive Director they hire, and the staff the Executive Director hires--have the task of managing the Market, including parking facilities, as a self-sustaining business entity, while addressing the business interests of independent food farmers, flower farmers, craft vendors, restaurants, fish mongers, meat shops, curio shops, office tenants, art galleries, gift shops, barber shops, used book stores, coffee shops, modern and vintage clothing stores, nightclubs, and a host of other specialty food and product vendors... And while meeting the needs and interests of market-rate and low-income housing residents, including service and support needs for low-income elderly tenants... Within a hodgepodge of aging structures that were not designed to serve as a single market center... Where almost any change in a structure or its use--even a change of paint color--has to be approved by another public body of volunteers (the Market Historical Commission)... All while operating as a public body, subject to specific Charter mandates, open meetings and public records requirements, and oversight by federal, state, and local governments.

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### **THE PDA'S FINANCIAL POSITION IS STRONG, AND THE PDA HAS DEDICATED SIGNIFICANT RESOURCES TO CAPITAL REPAIRS AND IMPROVEMENTS**

The PDA's financial position is strong, as represented in its annual financial statements. In 1991 the PDA established operating and capital reserve funds to help ensure the Market's survival. The PDA has made substantial investments in the Market's structures and capital equipment.

#### **Financial Condition**

In its 1980 review of the PDA's financial condition, the City of Seattle observed that the PDA recorded an operating deficit in five of its first six years of operation, and had neither operating nor capital reserves. The Legislative Auditor's report stated:

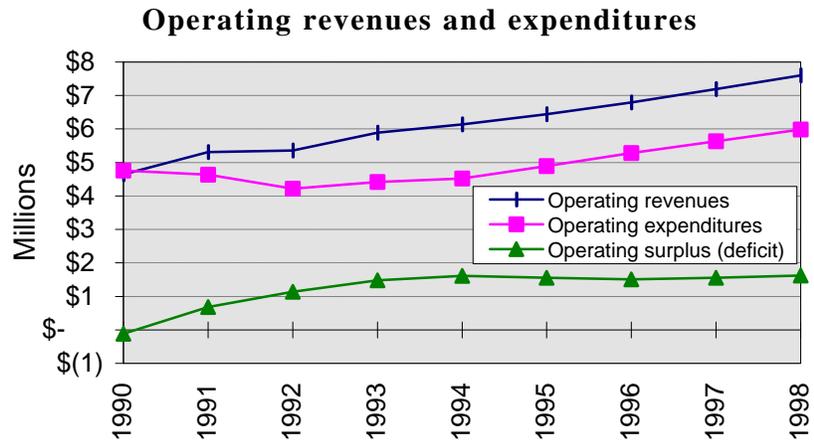
The PDA has had a difficult time supporting itself, and consequently, it has borrowed funds to meet current operating expenses, has either had previous debts forgiven or delayed, and has needed support from the City. The PDA has had deficits in almost every year of operation and has had liquidity problems requiring action by the City to help ease the problems.... Because the PDA has not had surpluses or excess cash, the PDA may have difficulty meeting its future obligations if costs increase substantially and if present external funding sources discontinue their support.<sup>9</sup>

The financial arrangements with The Urban Group, executed in the early 1980s, temporarily resolved the PDA's financial difficulties. But the PDA's financial condition declined again in the late 1980s, as a result of the lawsuit against the Group for control of the Market.

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<sup>9</sup> City of Seattle, *Completion of the Pike Place Urban Renewal Project and the Financial Condition of the Pike Place Market Preservation and Development Authority*, July 1980, 3, 20, 25.

Our opinion that the PDA's current financial position is strong is based primarily on trends in operating surpluses, assets, and cash increases; and on the creation and maintenance of capital and operating reserves. Operating revenues have exceeded expenses by roughly \$1.5 million--before debt service, capital expenditures, and reserves--each year since 1993. The net budget surpluses have been used mostly to supplement the PDA's capital and operating reserve funds, which were created in 1991. The PDA also maintains low income housing reserves, including some required by the federal Department of Housing and Urban Development (HUD).



Source: Washington State Auditor's Office audit reports;  
Francis & Kirschner PLLC audit reports.

In 1998 the PDA contributed \$6,400 to its Minimum Operating Reserve, to maintain it at its goal of about 5 percent of annual operating revenues. At the end of 1998, the Minimum Operating Reserve was \$311,400, or 5.1 percent of actual 1998 PDA revenues (excluding the parking garage, which is an independent entity). We believe 5 percent of annual operating revenues is a reasonable goal. Nonprofit government service agencies generally try to keep enough cash in reserves to meet four weeks of average expenditures, which is about 6.5 percent of annual expenditures (and revenues). The PDA also created a reserve fund for legal expenses in 1998.

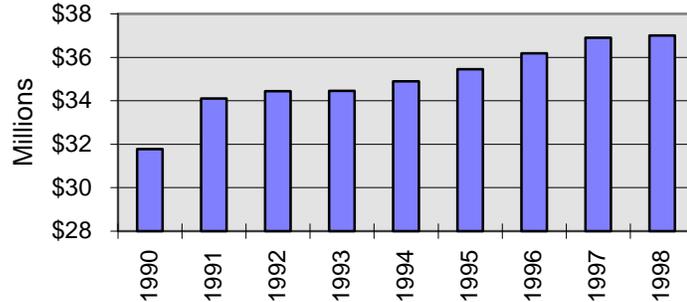
The PDA allocated \$330,081 to the Capital Repair and Replacement Fund (CRRF) in 1998, and expended \$ 268,000 from it. The PDA's policy is to contribute at least \$100,000 a year to the CRRF, created in 1991 as a condition of the settlement agreement with The Urban Group. With the contributions to and withdrawals from the CRRF in 1998, the balance of the reserve is approximately \$2.0 million. During deliberations on the 1999 PDA budget, the PDA Council Finance Committee informally increased its goal for the CRRF from a \$1.5 million balance to one of \$3 million. The Committee believes the higher goal is appropriate because it expects the cost of construction to continue to increase, and anticipates a need for major rehabilitation as the Market renovations of the 1970s age and for capital improvements to meet customer needs and preferences.

Total PDA assets have increased since 1990 at an average rate of 2.2 percent annually. Cash and cash equivalents have increased, on average, over \$500,000 annually since 1991. This reflects, in large part, the building of reserves referred to above.

### Capital Improvements and Repairs

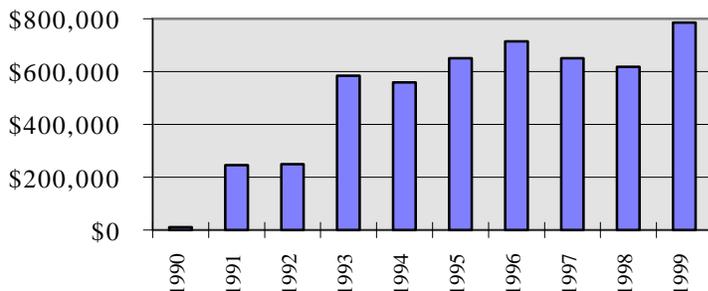
The PDA commissioned a comprehensive assessment and long-term projection of its capital conditions in 1992. Since then, the PDA has developed 5-year capital plans, which it updates each year. The 1998-2002 plan anticipates total expenditures of \$3.5 million for about 65 projects. The projects range from \$3,500 to upgrade telephone wiring to the PDA's Maintenance Shop to \$328,000 to repair column rot and replace engraved tiles on the Desimone Bridge and in the Main Arcade.

**Total assets**



Sources: Washington State Auditor's Office audit reports; Francis & Kirschner PLLC audit reports

**Capital program budget**



Sources: PDA staff; PDA budget documents.

The PDA's capital program has grown significantly since 1990, as the chart at left illustrates. The CRRF will contribute about half of the 1999 capital budget of \$786,000; the remainder will come mostly from the current operating budget.

These are a few of the most visible and expensive capital projects completed by the PDA in the last ten years:

- The windows in the Corner Market building were replaced and the exterior of the building was refurbished, largely with donated funds from the Care for the Market campaign, which was coordinated by the Market Foundation.
- The south public restrooms were remodeled in 1998 to expand the availability of women's restroom facilities and improve the cleanliness and sanitation of the restrooms.
- The sidewalk facing the outside slabs at the north end of Pike Place was widened to improve safety and accommodate pedestrian traffic; the slabs and the retaining wall were repaired to enhance structural integrity.
- The 1925 Market Center clock sign was rehabilitated by replacing twelve letters and upgrading electrical service to the clock.

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## THE PDA'S CONCLUSIONS AND POLICIES REGARDING THE IMPORTANCE OF LOCAL PRODUCE IN THE MARKET ARE REASONABLE

### Summary of Conclusions

The Market began as a place where local farmers sold fresh produce directly to local consumers. Preserving the Market as a farmers' market serves the specific Charter mandate to promote local produce sales, and its broader mandate to preserve the Market's historical character. It also implements the Historical District ordinance, which includes in its criteria for the Market Historical Commission a statement that the District "promotes local farming while making available local produce to shoppers and others."<sup>10</sup> Moreover, maintaining the Market as a farmers' market helps to maintain the Market as the public market of the citizens of Seattle.

Some members of the Market community believe the PDA is attaching too much importance to its food retailing and farm products mandate, relative to its mandate to promote "small shops, marginal businesses, thrift shops, arts and crafts, and other enterprises, activities and services which are essential to the functioning of the Public Market."<sup>11</sup> A PDA staff member told us he had expected the staff's proposed changes to the Hildt Agreement to spark a philosophical debate regarding this issue, but that the debate that arose instead was whether everyone who has a permit to sell in the Market today is entitled to protection.

Although the Charter directs the PDA to evaluate the effects of its actions on the Market community, the PDA's primary responsibility is to the citizens of Seattle. The Market was saved by and for them, and the Charter's mandates--their expectations for the Market's operation--direct the PDA to focus on meeting the needs of local producers, consumers, and residents. Although many Market merchants and surrounding businesses undoubtedly benefit from the Market's popularity as a tourist destination, it is the Market's food businesses that provide the most direct link to the Market's origins.

For the most part, the PDA Council and staff have done a good job in recent years of implementing programs to promote sales of local produce. Two major programs begun in 1997 have been well received by farmers, restaurants, and Market customers. Staff has produced thorough evaluations of those programs and made improvements in each succeeding year.

The Communications and Marketing Department has expanded its efforts to promote the Market generally, and to promote Market restaurants, merchants, and crafts vendors specifically. The PDA Council and staff were very thorough and responsive to community concerns as they implemented a new parking program in the Market Garage this spring; the program has shown promise in attracting local shoppers to the Market for brief errands.

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<sup>10</sup> Seattle Municipal Code, Section 25.24.040.

<sup>11</sup> *Charter of the Pike Place Market Preservation and Development Authority*, Article IV.

## History of Daystalls in the Pike Place Market

### City of Seattle Control of Daystall Rules and Rental Rates, 1907-1982

The Seattle City Council passed an ordinance in 1907 to allow farmers to sell their produce directly to the public on Pike Place. On 17 August 1907, ten farmers drove their wagons to Pike Place; they sold out within minutes. Within a week more than 70 farmers were selling their produce from their wagons on Pike Place.

Within two months the City established stalls on Pike Place to provide some sense of order. In 1912 the City created the position of Market Master to oversee the assignment of the Market stalls. Over the next ten years, developers built most of the main Market complex buildings and rented stalls in the buildings to farmers selling their own produce, poultry, eggs, and preserves. By 1925 the City was issuing permits to farmers to sell at the Market.

In 1932 the Pike Place Market issued an all-time high of 628 vendor permits to farmers. The number of permits declined to 418 in 1938, rebounded to 515 in 1939, then plummeted to 196 by 1943. The sharp decline was mostly due to the internment of Japanese Americans during World War II; they had comprised 60-80 percent of the fresh produce farmers in the Market. After the war, the Market overall entered a period of decline and the number of farm permits declined steadily before stabilizing around 50 permits per year in the late 1960s.

In the 1960s the City allowed Richard Desimone, a produce farmer and son of Joe Desimone, an early owner of much of the Market, to rent out daystalls not being used by farmers to vendors of crafts, imports, and second-hand items. (The daystalls are the 4-foot tables that line parts of the Market's Main and North Arcades, on the west side of Pike Place, occupied by local farmers and arts and crafts vendors.) This increased the use of the daystalls, especially during the winter months, which helped the Market maintain a year-round presence. But it also kept farmers from spreading their produce out onto unused daystalls, as they had become accustomed to doing.

In 1974 Seattle's Department of Community Development conducted and published a Market farmer/vendor study, which included surveys of Market farmers. "The farmers were queried about the problems faced in selling their products at the Market.... [T]he overwhelming response was that there was not enough space in which to display their home-grown products."<sup>12</sup> The study concluded, "For the Market farmer, changes are needed which provide him greater display space, increase his sales volume, and reduce the product conflict between him and the arts and crafts vendors."<sup>13</sup> It also noted:

Any addition of farmers will require an addition of shoppers... Therefore, any effort taken to reinforce the role of the farmer at the Pike Place Market must be complemented with an equally strong effort to attract more buying customers. The Market must be an economically viable place for disposing of one's products and

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<sup>12</sup> City of Seattle Department of Community Development, *Pike Place Market Farmer/Vendor Study*, May 1974, 15.

<sup>13</sup> City of Seattle Department of Community Development, *Pike Place Market Farmer/Vendor Study*, May 1974, 18.

that is the key to survival and future attraction of any and all of the vendors at the Pike Place Market.<sup>14</sup>

### PDA Control of the Daystall Rules and Rental Rates, 1983 - Present

From 1907 through 1982, daystall rules and rental rates were set by the City Council by ordinance. Because the City had established the PDA to manage the Market, and by 1982 had transferred ownership of most Market structures to the PDA, in 1983 the PDA asked the City Council to amend the rules governing the daystalls to acknowledge that the PDA owns the Market, and to officially transfer all daystall rule-making authority to the PDA. The PDA also proposed to classify flowers differently from other farm products and locate flower farmers on Flower Row, and to allow sales of second-hand merchandise in surplus daystall spaces.

The PDA's proposal was controversial, as vendors sought to ensure continuity for their businesses and operating assumptions. Public review and debate over the proposed changes led to the development of a contract between the City and the PDA that established some parameters for the PDA's management of the daystalls. Brokered by City Council President Michael Hildt, the contract became known as the Hildt Agreement. The contract was intended to provide a smooth transition of daystall management from the City to the PDA. Among other things, it established certain daystalls as primarily farm or craft stalls. The agreement was for a term of ten years, with three automatic renewal terms of five years each. The options were to automatically renew unless either the City or the PDA notified the other party to the contrary at least thirty days before the end of the term. (The Hildt Agreement is discussed in greater detail starting at page 20.)

### **Decline of Fresh Produce in the Market**

In the mid- and late 1980s the PDA actively recruited all types of farmers in an effort to reverse the decline in farm permits. This was also the period of the first significant influx of Indochinese farmers to the Puget Sound Region. The Market participated actively with King County and Cooperative Extension in assisting these new immigrants to establish themselves in farming. The Indochinese Farm Project introduced more than ten new families to the Market, all of whom grew vegetables. The number of annual farm permits soon doubled, but the number of fresh produce farmers in the Market continued to decline. More farmers also began selling processed food products such as jams and vinegars, because they offer higher profit margins and can be sold throughout the year.

A PDA report analyzing the 1989 Farm Program expressed concern about the declining appearance of the Market as a source of produce. It noted that during peak farm season, with full use of the 53 farm-priority spaces by farmers and full use of the remaining 120 daystalls by craft vendors, the ratio of crafts-to-farmers is slightly more than 2-to-1. (Since each farmer occupies two daystalls, whereas craft vendors each occupy one, the ratio of craft-to-farmer space would be 120-to-106, nearly 1-to-1.) But because farmers were not fully occupying the daystalls throughout the year, the actual average attendance ratio in 1989 was about 7-to-1 in favor of crafts. "As a result, even though there has been steady growth in the number of farm permits issued annually, in the number and variety of products sold on the farmtables, and in annual farmer attendance, the high profile cast by crafts vendors dominates the North Arcade

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<sup>14</sup> City of Seattle Department of Community Development, *Pike Place Market Farmer/Vendor Study*, May 1974, 22.

throughout the year to the extent that these gains have little visual impact, and the image of the 'farmers market' appears faint."<sup>15</sup> That same year, the Seattle Times and Seattle Weekly published newspaper articles asking, "Where Have All The Veggies Gone?" and, "Are Tourists Ruining The Pike Place Market?".

The 1989 report concluded:

While the Market enjoys considerable fame as an historic farmers market, that position is not reinforced by objective experience or perception.... Clearly, without strong representation and sales performances by fresh fruit and vegetable growers, the Pike Place Market is not functioning ideally as the traditional farmers market envisioned in its preservation charter.... What is needed is a balanced program that includes steady, incremental improvements in each of the following areas:

- 1.) The availability of quality selling space for vegetable growers.
- 2.) Product mix and competitive balance.
- 3.) Institutional support services for vegetable growers and customers....

Essential to any positive change in this area is the willingness of Market governing bodies to revise daystall policies and practices to give fresh farm produce improved status and positioning on the Market's farmtables.<sup>16</sup>

The report went on to recommend "two specific acts of institutional support that would immediately benefit vegetable growers in the Market:

1. Provide short-term, free parking for grocery customers....
2. Reaffirm that the primary purpose of the Market's daystalls is the direct-marketing of farm products. Revise daystall regulations accordingly to improve sales opportunities for produce growers during peak harvest periods."<sup>17</sup>

The report also specifically recommended that vegetable growers be allowed to have three selling spaces in certain locations rather than the standard two tables.

### **PDA Efforts to Revive Fresh Produce Sales in the Market**

From the early 1990s to date, the PDA has focused on recruiting farmers wishing to sell fresh fruits and vegetables. During the 1990s the PDA also undertook many initiatives and proposed Daystall Rules changes designed to further the sale of farm produce. Among other efforts, the PDA:

- established street selling space where farmers could sell produce directly from their trucks, on the south side of Pine Street between Pike Place and 1<sup>st</sup> Avenue (discontinued);
- established farmer truck parking behind certain daystalls to make those stalls more useful to vegetable growers;
- advertised in local daily newspapers to promote Market farmers and fresh foods and vegetables to local consumers;
- annually sponsored the "Taste of Washington Farms" to promote Washington fruits and vegetables to food professionals and consumers;

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<sup>15</sup> Pike Place Market PDA, *Pike Place Market 1989 Farm Program Report*, 26 February 1990, 3.

<sup>16</sup> Pike Place Market PDA, *Pike Place Market 1989 Farm Program Report*, 26 February 1990, 8-9.

<sup>17</sup> Pike Place Market PDA, *Pike Place Market 1989 Farm Program Report*, 26 February 1990, 12.

- produced and distributed a “Market Farm Product Guide” to chefs, food writers, and wholesale buyers to promote sales for fruit and vegetable farmers;
- published and distributed the “Market Fresh” sheet, which tells Market shoppers about fresh produce on the daystalls, each week during the growing season; and,
- proposed changes to the Daystall Rules and Regulations to enhance space for produce growers. Some were successful (priority of "wet side" tables for produce growers); some were not (dedication of specific space for fresh produce growers and priority in the selection of space to fresh produce growers).

In addition, the increasing ratio of flowers-to-produce on the Market daystalls prompted the PDA to stop granting new permits for flowers after 1995.

The Market’s efforts to attract farmers have been complicated by competition from other farmers markets in the area. Since 1990, the number of farmers markets throughout the state has grown from about ten to more than sixty. Although most are seasonal weekend markets and do not offer all the selling amenities of the Market—covered space, tables, water—they offer both farmers and shoppers certain advantages: food shoppers don’t have to compete with visitors and sightseers; free or inexpensive parking is relatively plentiful. Many of these markets allow only food products to be sold; as a result, some farmers who raise both produce and flowers are selling their flowers at Pike Place Market and their produce at other markets.

Since 1985, the number of farm permits issued has ranged from 95 to 129. In 1997 the PDA issued a total of 114 farm permits, but 17 of these permits were issued to newly recruited organic produce farmers to sell in the new Organic Day program. (This program is described in greater detail below.) Of the 97 regular farm permits issued in 1997: 26 were for flowers or plants, 31 were to farmers permitted to sell both flowers and produce; 32 were for fresh produce (fruits and vegetables); and 8 were for other food products (processed foods, honey, mushrooms, and ginseng).

In 1998 the PDA hired a consultant to review its Communications and Marketing Department. The consultant recommended that the department focus on food customers, especially downtown residents and commuters. “The food customer is the key audience -- the Market will lose local shoppers if it loses food customers.”<sup>18</sup> The consultant went on to say:

The fact is, in terms of actual, day-to-day business activity, today’s Pike Place Market is 99% not a traditional farmers market. The great preponderance of non-farm activity in the Market means that strong promotional reinforcement is needed to heighten public awareness of farmers’ presence in the Market, and that Market facilities and services must be improved wherever possible to raise the Market’s farm image and better promote retail sales for farmers.<sup>19</sup>

Two of the most recent, most ambitious, and most successful programs to date are the Organic Farmer Days and Market Basket programs. Both programs started in 1997; they are described below. A description of PDA efforts to promote the overall Market follows. In 1998 the PDA decided to further promote the presence of produce on the daystalls by allowing produce

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<sup>18</sup> Cocker Fennessy, *Pike Place Market PDA: Analysis and Recommendations, Marketing and Communications Department*, 14 April 1998, 2.

<sup>19</sup> Pike Place Market PDA, *Pike Place Market 1989 Farm Program Report*, 26 February 1990, 4.

farmers to have an extra daystall under certain conditions; this decision is described in detail in the next section of the report, beginning at page 19.

### Organic Farmer Days

Organic Farmer Day was initiated in 1997 “to revitalize the Pike Place Market Farm Program. It was designed to encourage more organic farmers to sell at the Market and to stimulate more local consumers to shop Pike Place for farm-direct produce.”<sup>20</sup>

In its first year the program operated each Wednesday for 19 weeks, from late June through October. Seventeen farmers participated in the program, selling organically grown produce from temporary stalls erected on Pike Place. Twelve of those were new to the Market and two others had not sold there for ten years.

In December 1997 the Market produced a report that evaluated the program’s first year and made recommendations for the next. Farm Program personnel surveyed participating farmers and shoppers regarding quality and variety of product, preferred days of the week to sell or shop, and other pros and cons of the program. The results were thoroughly discussed in the Market report, which covered such topics as farmer participation, average daily sales, effect on other Market merchants’ sales, marketing efforts, loss of parking on Pike Place, use of the Market parking garage, and logistical problems to be addressed next year. The report concluded that the program was well received by shoppers, and noted that several Market restaurants became regular customers.

In 1998 the program was expanded to two days each week, for 20 weeks. Sunday was chosen as the second day, based on surveys of farmers and consumers. Other changes included moving the closing time back from 7:00 p.m. to 6:00 p.m. (but allowing farmers to continue selling if they wished), and inviting local professional chefs to provide cooking demonstrations in the Market on selected Organic Farmer Days (“Cafe Organic”). The number of participating farmers remained at about 17.

In 1999 the program is again operating on Wednesdays and Sundays. Farm Program personnel are working with Market farmers, including four members of the minority H’mong community, to obtain state certification as organic farmers.

### Market Basket Program

The Market Basket program also started in 1997. The program was based largely on the Executive Director’s desire to develop something akin to community farms, popular in Europe and Japan, and their American derivative, community-supported agriculture (CSA). In community farming, participants purchase shares of the harvest before the growing season begins and collect their shares each week during the season. This gives farmers a guaranteed market for their produce, and cash when it is needed, before the growing season begins. The Market had tried a similar program in the late 1970s and early 1980s: the Bulk Commodities Exchange (BCE). The BCE was essentially a brokerage service between Market farmers and local restaurants and other customers. Customers would place an order for some quantity and type of produce, then pick it up at the Market. The BCE worked well at first but sometimes customers weren’t able to get everything they had ordered. To solve this problem,

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<sup>20</sup> *Organic Farmer Day: Evaluation and Recommendations*, third draft, 17 December 1997, 1.

the Market began keeping an inventory. This required them to purchase produce in advance of orders. Spoilage and cash flow problems brought about the program's demise.

To establish the Market Basket program, Market Farm Program personnel recruited farmers who would supply produce on a weekly basis throughout the growing season, and customers who would pay in advance to receive a weekly basket of whatever produce was available. In 1997 the program was considered experimental, so customers were recruited only at a downtown law firm. Baskets were delivered weekly for 19 weeks to the 32 customers at the building where the firm is located. In 1998 the program was expanded to 20 weeks with deliveries to six downtown locations--including the Municipal Building--with an option for subscribers to pick up their baskets at a location near the Market.

The PDA intended the Market Basket program to directly increase the presence of produce and produce farmers in the Market and to increase local consumers' awareness of the Market as a source of fresh produce. (In order to participate, farmers must also sell produce or flowers on the Market daystalls at least one day each week during the program.) The program has proven popular with farmers and consumers, as shown by actual and projected participation and sales figures:

- 1997: 6 farmers, 32 subscribers, \$10,000 total sales.
- 1998: 12 farmers, 136 subscribers, \$65,000 total sales.
- 1999: 20 farmers, 335 subscribers, \$150,000 total sales (projected).

Farm Program Personnel surveyed participating farmers and subscribers following the 1997 and 1998 seasons, and published reports that thoroughly evaluated the program. They discussed pros and cons of the program and recommended changes.

In 1999, subscribers are paying \$460 for 20 weeks of fresh produce. For an additional \$120, members will receive a bouquet of fresh flowers with their produce, also supplied by Market farmers. Businesses and neighborhood groups with 10 or more members can receive free delivery in downtown Seattle. To reduce expenses and delivery problems, and to increase consumer visits to the Market, there will be more opportunities for subscribers to pick up their produce, including the new 1-hour free parking program. (See page 18.)

As a new program, the Market Basket has not generated enough revenue for the PDA to cover all of its expenses. The PDA subsidized the program's food purchases by about 80 percent in 1997 and 25 percent in 1998. It budgeted \$15,000 in net program expenses for 1999, based on a projection of over \$150,000 in sales, for a subsidy of less than 10 percent. The PDA hopes the program will be self-sustaining in 2000.

### **PDA Efforts to Promote the Market and Other Market Merchants**

In addition to implementing new farm programs and marketing campaigns, the PDA has in recent years increased its marketing efforts for dining, crafts, and Market merchants generally. Total expenditures for marketing have increased by over 12 percent per year for the past 2 years, as follows:

Year	Budget amount	Percent change	Percent of operating budget
1997	\$ 411,587	N/A	7.6 %
1998	\$ 463,578	12.6 %	10.2 %

1999

\$ 519,835

12.1 %

10.8 %

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The Market's 1999 media plan focuses on attracting the growing downtown Seattle population of residents and commuters to the Market, especially during spring, fall, and the holiday season.

The Communications and Marketing Department's school program works with teachers to educate students about the Market. During the 1998-99 school year, 1,650 children from Seattle grades 2-5 toured the Market as part of the program. Other specific recent marketing efforts include production of or participation in the following:

- Daffodil giveaway: PDA staff handed out daffodils with promotional fliers to downtown passersby on the first day of spring in 1998 and 1999;
- "Market Fresh": A newsletter about food available in the Market (including fish and meat), published weekly during the growing season;
- "Farmers Markets in the Year 2000": A farm product marketing seminar, hosted and co-sponsored by the Market.
- "Fine Dining Guide": A brochure describing 10 premier dining establishments in the Pike Place Market Historical District, including 2 non-PDA tenants who contributed funds;
- "Good Food Guide": A brochure listing 27 PDA tenant restaurants, with a map and directory, published in June 1998.
- Holiday gift guide: A brochure listing Market merchants, recipes, and gift ideas.
- Desimone Gallery: The Market participated in the First Thursday Gallery Walk in March, April, and May of 1999, and published a brochure and postcards to support it. Selected Market artists displayed their work on the Desimone Bridge from 6:30-9:00 p.m.

In addition, a committee of PDA staff and Market merchants are currently studying recommendations made by members of Project for Public Spaces (PPS), an organization dedicated to the architectural improvement of parks and other public areas. (PPS sponsors the annual International Public Market Conference, which the Pike Place Market hosted in 1998.) The Executive Director convinced some PPS members to observe the Market for one day (24 October 1998) and develop some suggestions for improving pedestrian and vehicle access and flow in certain areas of the Market. The members issued a memorandum to the Executive Director in February 1999; it contains ideas that range from simple and inexpensive to substantial. This initiative appear to have great potential to improve the overall Market's appearance, safety, and convenience.

#### One-Hour Free Parking Program

In late 1998 the PDA proposed a new rate scheme for its parking garage, to encourage downtown residents and commuters to come to the market for brief shopping errands. The parking rate would remain at \$2.25 per hour, but there would be no charge for those who left within one hour. Those staying 1-2 hours would pay \$4.50. To support this promotion and to cover possible revenue losses from the 0-1 and 1-2 hour parking categories, the PDA proposed to eliminate its weekday evening rate (\$1 for unlimited time after 4:00 p.m.) and increase the commercial tenants' common area maintenance charge (COMA) by 3 percentage points (\$52,000 annual total).

Some merchants objected to the increase in the common area charges. Restaurants objected to eliminating the \$1 weekday evening rate. Some merchants were concerned that customers

would misunderstand the program, expect to get their first hour free no matter how long they stayed, and end up dissatisfied. Others felt that garage customers should have to prove that they purchased something in the Market to qualify for the free hour.

The PDA implemented the program in the last week of February 1999, but first it addressed the community's major concerns. The PDA eliminated the \$1 weekday evening rate but implemented a program to provide customers of the PDA's tenant restaurants with free evening parking in the garage. The PDA declined to require garage users to prove they had purchased something in the Market, reasoning that one hour was not enough time for many customers to go anywhere else. However, the PDA assessed the extent of Market shopping by surveying departing one-hour customers. PDA staff paid careful attention to accurate program signage, to ensure that customers would understand the program. The PDA also expressed its intention to evaluate the program's effects on parking garage revenues: If the program caused garage revenues to decline more than expected, it could be discontinued; if garage revenues declined less than expected, the increase in the common area maintenance charge could be reduced or eliminated.

So far, the program has exceeded the PDA's expectations. In the first three months, the number of cars parking for 0-1 hours was more than three times greater than for the same months of 1997 and 1998. Cars parking 1-2 hours increased by 5 percent over the same time period in 1998. Thanks to accurate program signage, very few customers have complained. Exit surveys by garage attendants have indicated that 82 percent of 0-1 hour parking customers are purchasing something in the Market, and most others are consuming services there or ferrying others for services or shopping.

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## **THE PDA SHOULD BE DILIGENT ABOUT OBSERVING THE SPIRIT, AS WELL AS THE LETTER, OF THE CHARTER'S PUBLIC PROCESS REQUIREMENTS**

### **Summary of Conclusions**

The PDA should have taken more time to explain its intentions and the expected effects of its proposed Hildt Agreement changes to the Market community. (The PDA proposed the changes to increase the presence of produce on the daystalls.) The PDA believes its initial three-month public process regarding changes to the Hildt Agreement in 1998 satisfied the Charter's requirements. But several PDA Councilmembers and staff have acknowledged that, in hindsight, they might have proceeded differently.

The PDA handled the annual review of Daystall Rules and Regulations ("Rules") in 1999 far better than it did the Hildt Agreement process and, according to community members, better than the 1998 Rules review process. Although the process started late because of the time spent on the new agreement, the PDA allotted 4 months to propose, present, discuss, and revise the Rules. PDA staff significantly revised their proposals in response to feedback from daystall vendors, and scheduled additional meetings when community demand warranted them.

We believe the PDA could increase community trust and good will, and thereby indirectly improve the Market's economic health, by clearly acknowledging when its actions have caused or contributed to friction or harm in the community. It should admit that its actions or processes turned out to be less than ideal, and try to ensure that it does not repeat its mistakes.

## **The Hildt Agreement**

The Hildt Agreement was developed in 1983 to provide continuity in the transition of daystall control from the City to the PDA. The agreement had a term of ten years, commencing 01 August 1983, with three automatic renewal terms of five years each. Either the City or the PDA could avoid the automatic renewals by giving the other party 30 days' written notice of its desire to not renew the agreement.

The Hildt Agreement applied almost exclusively to the Market daystalls, located in the Main Arcade and North Arcade, on the west side of Pike Place. It gave craft vendors first priority for indoor daystalls on the west side of the north end of the Arcade and for the outdoor "slabs" (just north of the Arcade). All daystalls on the east side of the Main and North arcades (the "wet side", where water is available) and the daystalls on the south end of the Arcade remained farmer-priority spaces. The agreement specified that all vendors of a given priority group--i.e., farmer or craftsperson--would pay the same rent; that no one could rent more than one daystall if anyone else in the *same* priority group would be deprived of a daystall; and that no one could rent more than two daystalls if any person of *either* priority group would be deprived of a daystall. It also established an annual review process for the Daystall Rules and Regulations, which provide the detailed rules for administration of the daystalls.

The Hildt Agreement was to expire in 1993. The PDA Council elected to renew the Agreement, but passed a resolution and sent a letter to the City Council expressing its concern over the status of farmers and indicating that the PDA Council might want to change the Agreement before the next renewal date in 1998. The Market Historical Commission objected to continuation of the Agreement on several grounds and urged the City Council not to renew the Agreement. The City Council approved the renewal, but noted the PDA Council's intent to carefully monitor the status of farmers and invited the MHC to again express their views in 1995.

In 1995 the PDA Council and its Farm Committee reconsidered whether the status of farmers required changes to the Agreement, especially regarding different rental rates for farmers and craft vendors. They decided not to propose changes at that time, but to continue monitoring the status of produce in the Market. The MHC also revisited this issue in 1995 and again urged the City Council to change the Hildt Agreement to enhance daystall space availability for farmers.

After the review of the Daystall Rules and Regulations for the 1998 season was completed in March 1998, the PDA staff and Council turned their attention to the upcoming expiration and second automatic renewal of the Hildt Agreement. They had decided by this time that some changes were needed, primarily to increase the presence of fresh produce on the daystalls. Given the 30-day notice requirement for non-renewal, they concluded they needed to vote on that issue at the 23 June PDA Council meeting. This gave them less than three months to develop change proposals, solicit input and feedback from the Market community, and revise the proposals as appropriate.

## **Hildt Agreement Public Process Compliance Analysis**

### Summary of Conclusions

We believe that the study groups' and others' statements that they did not have enough time to examine the proposal, and the amount of confusion and opposition in the Market community at

the time of the 23 June PDA Council vote, should have led the PDA to conclude that the process had not satisfied the Charter requirement that a “reasonable time” be allowed for public process. Members of the PDA Council and staff have acknowledged that, in hindsight, the Hildt Agreement process was not handled as well as they would have liked. The PDA should have started the revision process earlier, more than three months before the 01 July deadline for notifying the Seattle City Council if it did not want to renew the Hildt Agreement.

Given that the process began when it did, we believe the PDA and the Market would have been better off if the PDA had notified the City Council by 01 July of its intent not to renew the Hildt Agreement, but had not submitted proposed changes to the agreement at that time. The PDA could have pledged to submit a new agreement after extending the public process period to allow enough time to address community concerns. (This is ultimately what took place, at the City Council’s direction.) PDA staff told us they considered that option, but concluded that canceling the agreement without simultaneously offering a similar replacement would have created even greater problems than they already had. We acknowledge that an immediate uproar would have been likely, but believe the PDA’s credibility would have suffered less long-term damage if it had allowed more process and then followed through with a new agreement.

### Public Process Criteria

The PDA Charter contains extensive requirements for public notice and comment regarding certain proposed PDA actions, including any that would result in “[a] change in the established primary use of a main arcade, building, or major section of a building other than an individual tenant space within the PDA-owned properties in the Market Historical District”.<sup>21</sup> The Executive Director told us that, in response to a question from the Market community, she obtained an informal opinion from the PDA’s legal counsel that the Hildt Agreement revision proposals did not constitute a “change in the established primary use of” the Main and North Arcades. We also concluded that this section of the Charter did not apply.

For “less major actions” the Charter requires the following:

To the extent practicable, any proposal of the PDA ... that substantially affects any farmer, resident, merchant, tenant, social service organization, licensee, or lessee within the Pike Place Market Historical District shall be submitted to the Pike Place Market Merchants’ Association, the Pike Place Market Constituency, and the Daystall Tenants Association prior to its adoption by the PDA. To the extent practicable, any such proposal shall include a specific analysis of the likely impact of the proposal on any farmer, resident, merchant, tenant, social service organization, licensee, or lessee who will be substantially affected by the proposal and shall be submitted in a time and manner that affords a reasonable time to review and comment on the proposal prior to its adoption. Any recommendation to any such proposal shall not be binding upon the PDA but shall be responsibly considered by the PDA in its own deliberations on the proposal.<sup>22</sup>

Clearly the PDA’s proposed changes would substantially affect farmers and other merchants or licensees. The questions that arise in judging whether the PDA satisfied these requirements are:

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<sup>21</sup> *Charter of the Pike Place Market Preservation and Development Authority*, Article XV, Section 1.2.

<sup>22</sup> *Charter of the Pike Place Market Preservation and Development Authority*, Article XV, Section 3.

- 1) Did the PDA, “to the extent practicable”, submit its proposals to the Merchants’ Association, the Constituency, and the Daystall Tenants Association (DTA)?
- 2) Did the PDA, “to the extent practicable”, conduct “a specific analysis of the likely impact of the proposal on any [vendor or tenant] who would be substantially affected by the proposal”?
- 3) Did the PDA, “to the extent practicable”, submit its proposal and analysis “in a time and manner that affords a reasonable time to review and comment on the proposal”?
- 4) Were the community’s recommendations “responsibly considered by the PDA in its own deliberations on the proposal”?

The Executive Director told us the PDA’s legal counsel advised her, in April or May 1998, that the PDA’s planned public process—review of the proposal by three community study groups, followed by about a month of public comments and meetings—would meet these Charter requirements for “less major actions”.

It is difficult to assess compliance with these requirements with certainty because of the vague language used: “to the extent practicable”; “reasonable time”; and “responsibly considered” are all subjective standards. The PDA’s conduct would have to be clearly unreasonable or irresponsible in order to conclude that it did not meet these requirements. A description of the Hildt Agreement revision public process and our compliance analysis of the process relative to the Charter’s process requirements follow.

The Hildt Agreement Revision Public Process

In April 1998 the PDA’s Property Management Department drafted proposed revisions to the Hildt Agreement. The most controversial proposal was to allow the PDA to give each farmer selling a diversity of fresh produce, and no other products, an additional four-foot table, for a total of 12 linear feet of selling space. Some farmers did not want to be divided into classes with different selling opportunities and daystall rental rates. Since some high-seniority crafts vendors prefer to set up on available farm-priority daystalls, giving some farmers a third table would mean that all craft vendors, and possibly farmers selling flowers and processed food products, would get less desirable locations than they would otherwise have been able to get. Craft vendors were concerned that even those with lots of seniority in the Market might be unable to sell there on busy days during vegetable harvest season.

The PDA Council asked three “study groups” to review its proposed changes: one selected by the PDA Farm Committee, one selected by the Daystall Tenants Association, and one selected

The **Pike Place Merchants Association** became officially incorporated in 1973 as a nonprofit membership organization. Membership is required for PDA commercial tenants, and optional for daystall vendors. The purpose of the Merchants Association is to further the interests and aims of its members; to represent and advance the opinions and interests of its members; and to plan and implement activities in the interests of its members and the Pike Place Market in general. The Merchants Association publishes the monthly Market newspaper, *Pike Place Market News*, and in April 1999 it launched an Internet website that includes Market information, free advertising for its members, and some on-line shopping opportunities.

The **Daystall Tenants Association** (DTA) was formed in the late 1980s to represent the interests of daystall vendors in the Market, in response to proposed increases in daystall rental rates. The DTA requests, but does not require, a \$2 annual membership fee. Meetings are held “as needed” on the Desimone Bridge, at least once each quarter.

The **United Farmers Coalition** (UFC) was formed in 1998 by Market daystall farmers who felt that their interests were not adequately represented in PDA affairs. Its members include produce, flower, and processed food farmers.

by the PDA Executive Committee to represent consumers and historical concerns. PDA staff presented the proposed Hildt Agreement changes to the three groups on 01 May. The study groups submitted written responses to the staff's proposals by 29 May, as requested. All three stated that they did not have enough time to adequately review the changes.

On 05 June the PDA staff issued its "final" proposal for Hildt Agreement changes. The proposal incorporated some of the changes suggested by the study groups and some of the originally proposed changes were removed. On 06 June the PDA staff met with Indochinese farmers, with a translator, to explain the proposed changes.

PDA Staff presented its proposal to the PDA Council's Property Management Committee at its meeting on 11 June. The chairpersons of the three study groups made presentations to the committee, and public testimony was taken.

The Property Management Committee held a special work session meeting on 18 June to deliberate the staff's proposal. The Committee made further changes to the staff proposal in response to community concerns and voted, 5-3, to recommend it to the full Council. No public testimony was taken.

In response to questions from the H'mong farmers, PDA staff scheduled a special meeting with them, with a translator present, on 20 June. Several members of the PDA Council were present at the meeting, as well as the Executive Director. The meeting was contentious at times, and did not seem to resolve the farmers' concerns.

At the final Council meeting on 23 June, the Farm Study Group recommended passage of the changes as reflected in the Property Management Committee's proposal. The DTA Study Group recommended against making any changes to the Hildt Agreement. The Consumer Study Group was split: one sub-group said the PDA should allow the Hildt Agreement to renew without changes, the other group wanted the PDA to discard the Agreement entirely. Most of the Market daystall community opposed the change proposal. The PDA Council voted, 8-4, to adopt the proposal recommended by the Property Management Committee. (Two Councilmembers expressed support for the proposed changes but voted against the proposal because they believed that the public process had not been sufficient.)

The PDA notified the City that it did not wish to renew the Hildt Agreement unless its proposed changes were made. However, it pledged to abide by the terms of the expired Agreement until the proposed changes could be fully addressed in the 1999 Daystall Rules review process. On 27 August the City Council sponsored a public hearing regarding the PDA's proposed agreement. Although there was considerable testimony in favor of changes to promote the sale of fresh produce, the agreement and the PDA's public process were heavily criticized by craft vendors, farmers, the Market Historical Commission, and members of the public.

In October the City Council declined to approve the PDA's proposed agreement without additional public review. Based on testimony from the 27 August hearing, the Council concluded that the "PDA's process for submitting the proposed amendments did not allow for adequate review by some farmers at the Market as well as some other constituent market groups".<sup>23</sup> The Council passed a resolution asking the PDA to conduct "further public review as provided by the PDA Charter to address concerns and to work toward obtaining the support of the PDA Market

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<sup>23</sup> Seattle City Council, Resolution 29844, 19 October 1998, 2.

Constituency, the Market Historical Commission, the Merchants' Association, the Daystall Tenants Association, and United Farmers Coalition, and members of the public."<sup>24</sup>

#### Hildt Agreement Public Process: Charter Compliance Analysis

This section applies the PDA Charter's public process criteria, outlined above, to the PDA's initial public process for the proposed Hildt Agreement changes.

*Did the PDA, "to the extent practicable", submit its proposals to the Merchants' Association, the Constituency, and the DTA before adopting them?*

Conclusion: Yes.

Analysis:

The PDA submitted the first draft of its proposed Hildt Agreement changes to the three study groups in May 1998, along with a summary of the six issues addressed by the changes. The members of one of the three groups were selected by the DTA; the Executive Director of the Merchants' Association chaired another group.

Some members of the Market Constituency told us that the PDA did not formally submit a copy of its proposed changes to the Constituency. The PDA was unable to confirm whether they delivered copies of the proposed changes to the three groups. However, the second draft of the proposed changes, which reflected the study groups' input, was made available to the public on 05 June 1998 – 18 days prior to the PDA Council's vote. We believe this satisfied the Charter requirement because all three groups had an opportunity to review and comment on the proposal before the Council voted on it. But we recommend that the PDA make sure it delivers such proposals to the three organizations in order to ensure compliance with the Charter and to foster mutual respect and communication.

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<sup>24</sup> Seattle City Council, Resolution 29844, 19 October 1998, 2.

*Did the PDA, “to the extent practicable”, conduct “a specific analysis of the likely impact of the proposal on any [vendor or merchant] who would be affected by the proposal”?*

Conclusion: Yes – given the short time frame adopted by the PDA.

Analysis:

PDA staff solicited questions and comments from the Market community, and responded to those questions in a 5 June memorandum. They also looked at daystall attendance data from 1997 and 1998-to-date, selected the busiest days, and applied the proposed rules and their knowledge of existing farm permits to the attendance data to predict how craft vendors would be affected. The data suggested that the staff’s third farm table proposal would almost never have forced any craft vendors out of the Market.

Given the short amount of time the staff had to complete their work, this was about all they could do. But community demand for additional analysis was significant and justifiable. The DTA and others faulted the attendance data because it did not take into account the possibilities that existing flower farmers might switch to produce, or that more produce farmers might start selling at the Market.

During the additional public review period in late 1998, PDA staff improved and expanded this analysis during the additional public process period to address the community’s questions, and we expanded on staff’s analysis. (Further discussion follows, at page 28.)

*Did the PDA, “to the extent practicable”, submit its proposal and analysis “in a time and manner that affords a reasonable time to review and comment on the proposal”?*

Conclusion: As a legal matter: Maybe.  
As a practical matter: No.

Analysis:

The PDA did not take up the issue of the Hildt Agreement until the annual review of Daystall Rules and Regulations was completed in late March 1998. Facing a 30 June deadline for notice of intent not to renew the agreement, the PDA felt compelled to submit its proposed changes by that date. Also, staff members told us that they had not expected so many of the proposed changes to be as controversial as they turned out to be.

The following are excerpts from the reports issued by the three study groups:

Under the conditions provided for the study of the Hildt Agreement, i.e., one month from formation of our group to final recommendations, we feel an undue pressure to advise without sufficient time to consider thoroughly the proposed changes.... Consultation and research should take place over a longer period of time and in the off-season to allow for proper consideration. We need to consider what sort of impact the changes would have, and, in the long run, what the results would be.<sup>25</sup>  
(Farm Committee group)

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<sup>25</sup> Farm Committee Hildt Agreement Study Group, memorandum to the PDA regarding proposed Hildt Agreement changes, 28 May 1998, 1.

It is unconscionable to permit such a brief period, less than 3 weeks, for the daystall community to respond to proposed changes in city law which have been intact for 15 years, especially at the beginning of the summer when farmers and craftspeople alike are struggling to prepare for the season which sustains them and their families for the coming year.<sup>26</sup> (Daystall Tenants' Association group)

Adequate time was not provided for full analysis of the proposed changes. It was clear to us that even staff had not considered possibilities that might arise from their proposals when certain "what if" situations were presented by the group(s).... It is our opinion that if there are possible repercussions that staff has not considered perhaps staff needs to further assess their own recommendations.<sup>27</sup> (historic/consumer group)

The Market community expressed concern about the proposed changes, and the PDA's public process, by oral and written testimony at the public hearing on 11 June. Many daystall vendors also objected by more drastic means on 21 June, by conducting the second strike in the history of the Market. The PDA staff and Property Management Committee made significant amendments to the proposed changes between the first draft and the final proposal but proceeded to vote on 23 June despite considerable community opposition and uncertainty about the administration of the changes and their impact on vendors.

The critical word in this requirement is "reasonable". The PDA's Executive Director consulted with legal counsel in April or May 1998 regarding the PDA's planned public process, and was advised that the process would satisfy the Charter's requirements. The PDA stands by that conclusion.

Looking back at the process, we believe it is difficult to argue that the time allowed was reasonable, for the following reasons:

- The agreement was very important to the daystall community, especially the craft vendors. It had been in place for 15 years without major changes and the new agreement would be effective for at least 5 years. According to community members, the original Agreement was discussed for about 10 months.
- All three of the proposal study groups complained to the PDA that they did not have enough time to properly review the proposal.
- When the PDA Council voted on the proposal in June, many community members were confused about the changes, many were opposed to the proposal, and many felt the public process had been inadequate.
- Several concerns raised by farmers and craft vendors during the initial public process period—e.g., the effect of proposed changes on farmer and craft vendor seniority--were more thoroughly addressed during the City Council-mandated public process that took place between October 1998 and February 1999. The agreement submitted to the City Council in January 1999 enjoyed significantly improved support from daystall vendors and PDA Councilmembers.

If the time allowed was legally "reasonable", it certainly did not turn out to be enough.

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<sup>26</sup> Daystall Tenants' Association Hildt Agreement Review Committee, memorandum to the PDA regarding proposed Hildt Agreement changes, 27 May 1998, 3.

<sup>27</sup> Historic/Consumer Hildt Agreement Study Group, memorandum to the PDA regarding proposed Hildt Agreement changes, 29 May 1998, 1-2.

We believe that, when the amount of community confusion and controversy over the proposed changes became apparent, the PDA should have notified the City Council of its intent not to renew the agreement and agreed to abide by its terms until a thoroughly-developed replacement could be presented. (This is ultimately the result that occurred, when the City Council insisted on additional public process before approving the proposal.) PDA staff told us they considered doing so but decided not to because they believed that declining to renew the agreement without having a replacement in place would create an even greater uproar in the Market and the City.

*Were the community's recommendations "responsibly considered by the PDA in its own deliberations on the proposal"?*

Conclusion: Yes, but...

Analysis:

We believe the PDA responsibly considered the community input it received during the original public process period, *within the time it allowed for that process*. In response to study group and community comments, the PDA staff and Council significantly revised their Hildt Agreement change proposal during the initial public process period.

We believe the PDA's determination to complete its proposal by 23 June kept it from thoroughly considering some important community concerns. During the additional public process period requested by the City Council (described below) the PDA prepared more thorough analyses of the effects of PDA proposals on daystall vendors, and the PDA and other Market organizations were able to explain and discuss the PDA proposals more thoroughly. These efforts produced significant additional changes that resulted in much better support for the proposal in the Market community and the PDA Council. The Executive Director acknowledged as much in a January 1999 letter to the Mayor and City Councilmembers: "We believe that the additional time and public process have been useful and have resulted in a final proposed City:PDA Agreement that is in many ways improved from that which was first sent to the City Council".<sup>28</sup>

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<sup>28</sup> PDA letter to Mayor Schell and Councilmembers Donaldson and Licata, 29 January 1999.

## **Additional Public Process**

### Additional Daystall Impact Analysis

In September, after the City Council declined to approve the PDA's proposed agreement, PDA staff created a computer spreadsheet and graphs of actual daystall use by farm and craft vendors in 1997 and 1998-to-date. The graphs verified the staff's earlier data and conclusions.

DTA representatives and other community members pointed out that, although the staff's historic daystall attendance data and graphs were useful, they did not really illustrate the effect on the craft vendors of additional table use by farmers. Moreover, they did not show what would happen if more farmers began selling produce at the Market.

PDA staff provided us with copies of their daystall attendance spreadsheets and graphs, which we modified to create a model that allows the user to input hypothetical variables for the following factors:

- percentage of farmers who would qualify for and take a third table; and
- number of additional farmers selling in the Market.

After experimenting with values for these variables, we confirmed the PDA staff's prediction that craft vendors would rarely be forced out of the Market by the proposed changes, even if many more farmers began selling produce. However, all craft vendors would be shifted northward to daystalls that some vendors consider less desirable. We presented this information to the PDA's Property Management Committee as well as to members of the "Oval Table", a community group formed to seek consensus on changes to the Hildt Agreement. (The Oval Table is discussed further at page 28.)

Members of the community then pointed out that our computer model did not reflect the fact that uncovered (outdoor) stalls are not viable selling spaces on rainy days. We then modified our first model to allow the user to choose what level of precipitation per day would prohibit sales from uncovered stalls. (PDA staff also worked independently to implement rainfall into the model.) We concluded that, although craft vendors with low seniority are routinely unable to sell on rainy days because there are more craft permits than craft-priority daystalls, giving farmers a third table would push outside some vendors who currently have enough seniority to get space inside. Some of these vendors would probably get "rained out" of the Market on some weekends in spring and fall.

We summarized the results of this model under various assumptions in a memorandum to City Council member Steinbrueck. (See *Appendix IV*.) We provided our completed computer model to the PDA staff for their review and further use.

### The Market Constituency "Oval Table" and the PDA's Public Process

At its October 1998 meeting, the Pike Place Market Constituency proposed a "round table" format for dialogue between the PDA Council and the five organizations named in the City Council's resolution. Each organization was asked to select one or two delegates to participate.

The PDA Council decided not to designate representatives to the Constituency's discussion panel. The Council's Executive Committee was concerned that participating in the panel would

create an expectation that the final agreement would be a matter of consensus, which would conflict with the Charter provision (and 1990 Superior Court decision) that gives the PDA Council sole responsibility for managing the Market. The Council Chair encouraged Councilmembers to attend the panel's meetings in an individual capacity.

The discussion panel, which came to be known as the Oval Table, met approximately once each week for 12 weeks, beginning in November 1998. (The name, "Oval Table", distinguished the panel from a defunct "Round Table" group in the Market, and reflected the shape of the table in the Market meeting room where the group met.) Most PDA Councilmembers attended at least one of the meetings. Furthermore, the Council accepted the Oval Table group's invitation to attend the group's final meeting, where they discussed the group's conclusions and recommendations.

The PDA Council decided to respond to the City Council's resolution by reviewing the videotape of the 27 August City Council hearing, developing a written response to concerns expressed there, and conducting a public hearing to present the response. The PDA published this report on 04 December 1998. It was mailed to Market organizations and was also available at the PDA office and on its computer website. PDA staff summarized the report at the December Property Management Committee meeting. The public was given until 04 January 1999 to respond to the report. On 12 January the PDA staff issued a written response to the public comments it had received.

On 18 January the Oval Table group published its final report. The group was not able to reach consensus on several of the most controversial aspects of the proposed changes, including the issues of assignment of a third table to produce growers and assignment of less than two tables to farmers during the holiday season. The report summarized the issues on which the group did and did not reach consensus, responded to the PDA staff's proposed new changes to the agreement, and recommended specific changes to the language of the Hildt Agreement. On 19 January the PDA Council Property Management Committee held a public hearing to allow the five Oval Table organizations to present their recommendations and comments, and to take testimony from the public.

On 21 January the PDA staff prepared a matrix of alternative language options for a new agreement proposal, to be voted on by the PDA Council's Property Management Committee. The committee voted to incorporate most of the changes suggested by the Oval Table group. On 26 January the full PDA Council unanimously adopted the proposal submitted to it by the Property Management Committee, with minor changes.

The new proposed agreement authorized a third farm table but mostly left the controversial issue of who would qualify for a third table to be determined in the annual Daystall Rules and Regulations review process. This approach will allow the PDA to change the rules as often as annually if necessary, rather than be locked into an ineffective or problematic system for the entire 10-year term of the agreement.

The UFC supported the new proposal, although the DTA and Constituency still opposed the key third produce table provisions. The City Council heard public testimony on 29 January, and in February voted to adopt the agreement with minor technical amendments. The new agreement expires 30 April 2009. At least 180 days before that date, the PDA must submit a report to the Mayor, the City Council, and the Market Historical Commission; the report "shall contain specific recommendations for establishment of suitable and appropriate standards for the future

operation of the Market Daystalls to achieve the purposes of the PDA Charter and Historical District Ordinance, including whether the Agreement should renew as is, renew with changes, or terminate.”<sup>29</sup>

### **1999 Daystall Rules and Regulations Review**

In contrast to its initial Hildt Agreement change process, the PDA allowed adequate time for its annual review of Daystall Rules and Regulations (“Rules”) in 1999. (Once the review process is complete, the PDA Council can change the Rules as it sees fit.) According to community members, the process was also an improvement over the 1998 review. We believe the process clearly satisfied all four of the Charter’s public process requirements for “less major actions”. (See page 21.)

As with the Hildt Agreement proposal, all of the staff’s initial proposed changes and revisions were made available to the public. Staff described the anticipated effects of the proposed changes in the same public documents. No additional statistical analysis was needed because the most significant changes dealt with qualifications for farmers to get a third daystall, which had already been analyzed during the Hildt Agreement process.

The process started later than usual because of the time spent on the new agreement, so the PDA categorized its proposed changes as minor and major, and allotted four months to propose, present, discuss, and revise the major changes. The minor changes were reviewed and enacted within two months, without controversy. (When it became apparent that some of the minor changes were controversial, PDA staff assigned them to the full four-month review process.)

PDA staff significantly revised their major change proposals in response to feedback from daystall vendors, and scheduled two additional meetings when community demand warranted them. The PDA Council made minor amendments to the proposals, and voted to approve them on 22 June 1999.

### **Thoughtful Public Process Benefits the PDA and the Market Community**

According to the Executive Director, most of the PDA Councilmembers believe they were very well informed of the objections and concerns of community members regarding the Hildt Agreement changes, and that they took these concerns into account in the numerous changes made to the original proposal. They did not lack good information from the community; rather, they simply did not agree with the community members who opposed changes in the Agreement.

We acknowledge that informing the PDA about community concerns is one of the important purposes served by public process. However, we believe it is also important that public processes be perceived by most of the community as fair and adequate. The PDA needs to embrace public process as an opportunity, not only to become informed of community concerns, but also to thoroughly inform the community about its intentions and the expected effects of its actions. As a City Council member said in discussion of the reappointment of a PDA Councilmember in February 1999, “I understand making difficult decisions, and I understand that we are called to make difficult decisions that people aren’t going to like. But I

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<sup>29</sup> *Licata-Hildt Agreement*, Section 14.

also know that when we make those difficult decisions, we have a responsibility to try to communicate them in a way that people can understand them even if they don't agree with them."<sup>30</sup> If more efforts had been made to explain the proposed Hildt Agreement changes during an initial, longer public process, much of the community confusion and opposition that accompanied the 23 June vote might have been avoided.

It was clear from the 20 June meeting with the H'mong community, and from public testimony at hearings and PDA Council meetings, that many community members did not understand some of the PDA's proposed changes, and that their uncertainty spawned much of their opposition to the changes. In particular, many flower farmers mistakenly believed the proposed changes might cause them to be restricted to one daystall instead of two. Regardless of the quality of the PDA's proposal, proceeding to vote under these circumstances further eroded its already strained relationship with the Market community, sparking only the second merchant strike in the history of the Market. A PDA Councilmember's testimony before a Seattle City Council committee seemed to acknowledge this aspect of public process:

I think last June, on the Hildt, we should have had a more extensive process. I think the result would have been the same--I *think*--but I think we should have had a more extensive process. I think it would have saved us a lot of gnashing of teeth, a lot of trees being cut down to make paper, if we had done it a little bit better the first time around.<sup>31</sup>

In addition to making merchants skeptical of future PDA actions, processes that are perceived by the Market community as unfair can generate bad publicity for the Market. During 1998, local media published numerous articles regarding the Hildt Agreement controversy. Even good decisions, when reached by inadequate processes, can harm the fundamental business interests of the PDA and its tenants. Some members of the PDA and Market community have speculated that the Hildt Agreement controversy may have been partly to blame for the Market's relatively poor 1998 holiday season sales.

#### Lack of Information Can Result in Confusion

When proposals and the reasons behind them are not thoroughly explained, the resulting knowledge gap leaves the PDA vulnerable to rumors and misinformation about its proposals. The PDA believes that this occurred, whether intentional or not, during the public review of the proposed Hildt Agreement changes. For example, a DTA flier entitled, "PDA 'Wish List'" and subtitled, "(original changes sought by PDA)", which was circulated before the PDA Council's 23 June vote, appeared at first glance to be a list of likely effects of the proposed changes to the Hildt Agreement. However, some of the items listed were not related to the proposed changes; they could have been enacted without changing the Agreement. Several others reflected originally proposed changes that the PDA had already withdrawn when the flier was produced. We believe it is likely that the flier contributed to the Market community's confusion about the proposed changes, especially among the primarily Indochinese flower farmers.

A DTA representative told us that the flier was not intended to mislead readers into believing that all of the listed "effects" were likely to occur if the proposal were to pass as it then existed. Rather, it was intended to raise questions in the community about the ultimate objectives of the PDA Councilmembers and staff. By calling the nine listed items "highlights from the PDA staff

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<sup>30</sup> Culture, Arts, and Parks Committee of the Seattle City Council, 10 February 1999.

<sup>31</sup> Culture, Arts, and Parks Committee of the Seattle City Council, 10 February 1999.

‘wish list’”, the authors meant to acknowledge that the listed items were their divinations or deductions of the PDA’s intentions, based on the changes originally proposed to the study groups.

### History of Inadequate PDA Communications

The Hildt Agreement process was the most recent controversy between the PDA and the community that raised concerns about adequate process, but it was not the first. For example, in the 1998 Daystall Rules review process, the PDA intended to propose an increase in the fee paid by the musicians and other artists who perform in the Market, from \$15 to \$25 annually. PDA staff mistakenly left this out of their initial written proposal, then inserted it after the process was under way. Meanwhile, an article on the 1998 budget, published in the Pike Place Market News, stated that no change was being proposed for permit fees. Because performers were not in the PDA’s database of daystall vendors, they did not receive notice by mail of the proposed permit fee change or of scheduled Rules review meetings. The performers and daystall community expressed dismay over the poor notice and lack of discussion time, and in April 1998 the PDA withdrew the proposal to increase performer permit fees. We concluded that, as in the case of the performer permit fees described above, the PDA usually ends up “doing the right thing” when it becomes clear that the costs of its actions outweigh the perceived benefits. But just withdrawing an unpopular proposal or process does little to reverse the frustration and ill will it has generated. In fact, it may send a message to the community that vigorous opposition is the best way--perhaps the only way--to react to PDA proposals it doesn’t like. One community member put it this way:

Often times it has felt like the PDA has thrown out proposals to the community just for the sake of doing so, with little regard for the necessity, practicality or fairness of said proposals. Incredible amounts of time, energy, and paper have been expended/used by the community responding to PDA proposals. What’s particularly infuriating is the fact that PDA staffers get paid to oversee the rules reviews, while those of us in the community already have jobs in the Market doing one thing or another. We don’t get paid to write letters or attend meetings. But if we don’t make our opinions known, damage to our respective livelihoods inflicted by ill thought-out rules changes would be even worse than it has been when we participated in the rules reviews.<sup>32</sup>

We believe the PDA could increase community trust and good will by visibly acknowledging when its actions have caused or contributed to friction or harm in the community. It should admit that its actions or processes turned out to be less than ideal, and express regret for any community stress caused thereby, and try to ensure that similar circumstances are addressed differently in the future.

### The PDA Should Acknowledge its Mistakes

In the case of the Hildt Agreement changes, several PDA letters and publications acknowledged that the proposed changes created controversy, expressed regret that the controversy occurred, and spoke to the need to improve communications with the community. After the City Council approved the revised Hildt Agreement in February 1999, one of the first PDA communications to the daystall community (introducing the Daystall Rules review process) stated, “We deeply regret that there has been so much acrimony over the changes to the Hildt Agreement” and encouraged the community to “join us in working toward a repair of

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<sup>32</sup> Letter to the Office of City Auditor, 06 April 1999.

relations”.<sup>33</sup> Like the December 1998 report, the letter expressed regret that acrimony developed but did not include any admission by the PDA that its review process was in any way responsible for that acrimony. The report did not state that, in hindsight, the PDA Council and staff wished they had proceeded differently, or that they would try to proceed differently in similar situations in the future.

Some PDA communications addressed to the daystall community—the group most affected by the Hildt Agreement review process—seemed to suggest that the *process* did not cause any harm in the community. For example: The PDA’s December 1998 report to the City Council included a summary of comments from the 27 August City Council hearing, and the PDA’s responses to those comments. In response to allegations that the Hildt Agreement revision review process had been too brief, the report stated:

The stress and anxiety experienced by members of the community is, in part, a function of disagreement. In part, it is a product of the fact that the PDA did make substantive changes to the first draft proposals. Less stress in the community may have resulted if fewer suggestions had been offered in working drafts. Less stress may have occurred if there had not been a deadline imposed by the Agreement.<sup>34</sup>

The first sentence is obviously true, but it does not address the brevity of the public process. Although the second and third sentences may be true, taking more time to evaluate suggestions and changes would seem to be a better option than making fewer suggestions and changes. These two sentences imply that taking more time for public process might have resulted in more stress. In contrast, the last sentence suggests that the time allowed for public process may indeed have been too short, but if so, it is not the PDA’s fault—it is the fault of the Hildt Agreement itself, for having a deadline. (We note again that the deadline was for notice not to renew the Agreement. Thus, the PDA could have met that deadline, continued to honor the expired agreement while conducting further public process regarding its proposed changes, and submitted the changed agreement later.)

PDA statements that evade responsibility in this manner are not likely to regain the trust and confidence of the Market community. Several PDA Councilmembers and staff acknowledged in other forums that the public review process was not ideal. The PDA Councilmember’s testimony before the City Council, quoted at page 31, is an example. We believe that statements of this nature are an important step in repairing relations with the Market community when PDA actions produce unexpectedly harmful results.

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## **THE PDA’S COMMERCIAL LEASE POLICIES AND PRACTICES APPEAR TO BE CONSISTENT WITH ITS CHARTER MANDATE**

### **Summary of Conclusions**

We believe the PDA is upholding its Charter mission to “promote the survival and predominance of small shops, marginal businesses, thrift shops, arts and crafts, and other enterprises, activities, and services which are essential to the functioning of the Public Market”, within the context of preserving the Market’s historical character.

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<sup>33</sup> PDA staff letter to “Market Artists, Craftspeople, Farmers, and Performers”, 19 February 1999.

<sup>34</sup> *Full PDA Report: Hildt Agreement Amendment Concerns, Responses, and Action Proposals*, December 1998, 2.

The character of the Market's landlord-tenant relationships has changed, though: In the early days of PDA administration, Market rental rates were lower, leases were for longer terms, and lease documents were less complex, with fewer operating restrictions and requirements. But the Market of the 1970s was in turn a far cry from the first freewheeling day in 1907 when farmers sold produce, unregulated, from their wagons on Pike Place. Moreover, the Market was in the midst of a redevelopment process whose success was not guaranteed.

The Market can be "lost" in either of two ways: It can stray from its traditional character or it can fail financially as a business entity. If the Market is to survive and thrive as a business entity in the face of increasing competition from other farmers' markets, modern full-service grocery stores, and retail shopping destinations in Seattle's Central Business District, the PDA must strike a balance between the Market's original old-world market character and modern business practices.

The PDA's commercial lease guidelines and practices appear to reflect a conscious effort to implement modern business practices in ways that are least likely to affect its historical character--especially the character perceived by citizens and customers. The PDA continues to recruit and incubate traditional or unique owner-operated businesses for the Market, rather than chain stores or franchises. The PDA's tenant requirements and restrictions are less onerous than those of commercial retail centers, and no more so than those of other public markets we examined.

Current management expects businesses to establish and meet performance standards as a condition for automatic lease renewal, and expects established Market businesses to improve their performance if their sales are significantly below neighboring businesses' sales figures. However, we found no evidence to support claims that the PDA uses performance standards to replace traditional tenants with more profitable or upscale businesses. When the PDA declines to renew an underperforming tenant's lease, it typically continues the prior lease terms on a month-to-month basis and often provides referrals for business planning or financial support for consulting assistance.

In response to a request by seven tenant restaurants for rent reductions, in 1997 the PDA and the tenants commissioned a rent study of their restaurants. Together they hired an appraiser to do the work. The study concluded the restaurants' rents were higher than market value. PDA staff and Councilmembers believed there were problems with the appraiser's methods, so they had the study reviewed by two other appraisers and a commercial real estate expert. The reviewers confirmed the PDA's concerns about the study, whereupon the PDA rejected it. The PDA Council and staff maintain that they entered into this process in good faith, to try to work with good tenants to resolve their concerns. In their view, they erred by agreeing to accept a proposal they were not comfortable with, and got "burned" as a result. We were not able to judge the quality of the study, but we found no reason to conclude that the PDA did not act in good faith.

### **PDA Rental Rate Policy**

Some merchants believe the PDA should give all tenants below-market rental rates. One Market merchant stated, "The PDA doesn't seem to recognize that Market merchants have a higher cost of doing business than malls or other stores, because the Market requires a lot of personal interaction by the merchant with customers. That's what is unique about the Market. The PDA doesn't take this into account when it sets lease rates."

Members of the PDA staff and Council believe that most Market tenants pay below-market rental rates. However, the Charter does not direct the PDA to offer below-market rent levels as a way of fulfilling its public purposes or its obligation to Market businesses. The PDA's Lease Administration Guidelines, adopted by the PDA Council in 1992 and revised in 1994 and 1996, provide guidance for three circumstances under which below market rents might be appropriate: 1) to support start-up businesses, 2) to aid businesses or organizations designed to serve low and moderate income persons, and 3) to support and sustain "the Market's unique character-defining businesses".

### Start-up Businesses

The PDA usually gives new business tenants a 6- or 12-month lease so they can try operating in the Market without making a long-term commitment. PDA staff told us they often provide rents on these leases that are below its target rents for the location, then increase the rent to the target level when the business becomes successful. This practice is in accord with the lease administration guidelines, which state:

The obligation of the PDA to provide incubator rent terms to Market commercial businesses should be limited. It is in the interest of Market tenants overall for the PDA to expect commercial businesses to meet specific norms of economic performance *after a start up period*.<sup>35</sup> (Emphasis ours.)

The new Market business owners we interviewed expressed satisfaction with the PDA's lease terms and other support. Their only common complaint was that it was taking the PDA a long time to get their businesses' names on Market signs.

### Low- and Moderate-Income Organizations and Businesses

The Commercial Lease Guidelines state:

It should be the PDA's practice to offer subsidized rent levels (defined as base rent charges below targets for similarly located businesses in the Market) over an extended period, only to those businesses or agencies that exist for the purpose of providing low cost goods or services to low income people.<sup>36</sup>

PDA staff told us that storage space in the Market rents for a minimum of \$6 a square foot and the spaces occupied by the social service agencies would rent for \$7 to \$17 per square foot (varies by location) to other commercial uses in the Market. We confirmed that the Senior Center, Child Care Center, Market Clinic, and Foodbank pay significantly lower rents for their service and storage space. The PDA also leases prime space on Pike Place, at a significant discount, to a business specializing in day-old baked goods. The PDA also retains some businesses in prime locations because they serve local residents—e.g., *Left Bank Books*, *Rainier Hardware*—even though other types of businesses might be more profitable in those locations.

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<sup>35</sup> Lease Administration Guidelines for Pike Place Market Preservation and Development Authority Commercial Property Management Department, 3.

<sup>36</sup> Lease Administration Guidelines for Pike Place Market Preservation and Development Authority Commercial Property Management Department, 3.

## “Character-Defining” Businesses

According to the lease guidelines, produce, fish, and meat businesses are among those the PDA Council considers central to preserving the Market’s traditional character. PDA staff told us that percentage rent terms for the Market’s meat and fish markets are generally below what other independent butchers and fishmongers would pay, relative to their gross sales.

PDA staff told us that they routinely track the health and competitive outlook for the Market’s core fresh food businesses. In the early 1990’s, the PDA undertook to negotiate rents for the Market’s ten produce stands to accomplish three purposes: to equalize rental rates for comparable space (previously there had been wide disparities); to set rental rates below those paid by other types of tenants for comparable space, in recognition of the central role of produce vendors in the Market’s traditions; and to exempt the produce highstalls from the expectation that they would use cash registers for all sales, since doing so would substantially change the nature of their traditional businesses.<sup>37</sup> According to the Executive Director, the PDA staff is currently re-evaluating the health of its highstall produce businesses to determine what actions might be appropriate to propose to the PDA Council to support these core Market businesses.

## **History of Market Rental Rates and Lease Terms**

When the PDA was redeveloping the Market in the 1970s, it offered merchants long-term leases and below-market rental rates in order to attract and retain businesses in the Market. At the time, the Market was not a thriving economic center, and merchants were often risking substantial investments to turn a shell space into a retail shop without knowing whether the Market revitalization would be successful. In addition, the federal Small Business Administration (SBA), which loaned money to many Market merchants to finance the build-out and equipping of their shops, required leases of sufficient length to cover the loans’ repayment periods.

The City’s Legislative Auditor cited low rents and long-term leases among the causes of the Market’s financial problems in 1980:

Reasons for the PDA’s financial problems are the following: rents have not been adjusted as fast as they should have been to account for increased costs; development and property management projections were not accurate; rents were made low to encourage past tenants to stay in the Market; and rents had to be kept relatively low to promote the survival of small shops and marginal businesses...

The Executive Director believes that rents are now 50-60 percent of market rates... The major factor limiting the PDA’s ability to increase its revenues and margins is that most of its leases are long term.<sup>38</sup>

Merchants, PDA Councilmembers, PDA staff, and other officials agreed that PDA tenants today pay rental rates closer to fair market value than they did in the PDA’s early days. The Urban Group dispute of the late 1980s and early 1990s placed a much higher level of scrutiny on PDA leasing and rental practices than had been true in the past. But some of the rent increase

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<sup>37</sup> “Highstalls” are the produce vendors with permanent locations in the Main Arcade and Corner Market who sell produce purchased at wholesale rather than crops grown by the owners.

<sup>38</sup> City of Seattle, *Completion of the Pike Place Urban Renewal Project and the Financial Condition of the Pike Place Market Preservation and Development Authority*, July 1980, 20-25.

perceived by Market merchants should probably be attributed to the increase in fair market rental rates in the downtown Seattle market generally.

Most Market leases today are 3-year leases with 2-year renewal options; major restaurants and major specialty food businesses usually get 5-year leases with 5-year renewal options. We found this typical of the other markets and commercial retail establishments we examined.

When the PDA's Manager of Business Development ("Manager") was hired by the Director of Property Management nine years ago, the PDA did not have written commercial leasing guidelines, and rental rates for similar tenants varied greatly. As old leases expired, the PDA worked to ensure that similar businesses in similar locations pay similar rents. The PDA also developed standard Lease Administration Guidelines that describe the typical practices and policies of the PDA in commercial merchant relations.

Several merchants expressed frustration with the PDA's lease renewal negotiation process. They told us the PDA is unwilling to negotiate very much regarding rent amounts. The Executive Director acknowledged that the PDA has a narrow band for rental rate negotiations with each individual tenant, because the PDA is committed to the principle that similar businesses should pay equivalent rents (after taking location into account). The Executive Director also pointed out that, on the other hand, the PDA sometimes agrees to a more favorable rental rate structure if a tenant agrees to major reinvestment in a business. Also, it sometimes phases in substantial rent increases over two or three years, rather than subjecting tenants to sudden large increases.

PDA staff told us that vacancies are rare; our observations in the Market confirmed that this is the case. Because there are few vacancies, the PDA does not track actual vacancy rates. The Executive Director told us that, during the annual budget development process, she and the Property Management Director would "look back at vacancies and lost revenue for the year as a percent of full occupancy revenue (and/or vacant square footage versus annual available square footage)." Vacancies have consistently been under 0.5 percent for commercial property (and about 2 percent for residential property). In addition, the staff told us that monthly commercial rent delinquencies are consistently below 1 percent of revenues.

### **Restaurant Rent Study**

In March 1997 the owners of seven Market restaurants approached four PDA Councilmembers about the consistency of their rental terms with PDA Lease Administration Guidelines. They had collected comparative information from several competing restaurants and concluded that they were paying higher rental rates than their competitors. They viewed this as evidence that their rent amounts were above market value, and they interpreted the PDA's Leasing Guidelines to say that PDA rental rates should be below market value.

The four PDA Council members and the restaurant owners met to discuss the owners' concerns. The group agreed to hire an appraisal firm to conduct a rent study, agreed on a maximum contract fee, and agreed to split the fee between the PDA and the restaurants. The committee developed an RFP (request for proposals), and reviewed the proposals that were submitted. According to PDA staff, neither the PDA Council members involved nor the restaurant owners offered to accept the study results as the basis for restaurant rental rates.

According to minutes of a PDA Council Executive Committee meeting, the ad hoc committee rejected one finalists' proposal after interviews, leaving two from which to choose. One of the Council participants "felt that in the case of one of the two, he would feel comfortable in accepting a result that was adverse to the PDA (i.e., that indicated that our rents were above market rate), however, in the case of the other finalist, he could not say he would be willing to accept judgments that were adverse."<sup>39</sup>

The restaurant members of the committee preferred the proposal of the firm about which PDA Council members had raised concerns. Despite Council reservations, however, the committee agreed to proceed with the appraiser favored by the restaurant owners. Before publishing the final report, the consultant submitted the list of "comparable" restaurants/locations that it was using as the basis for the analysis. The PDA's staff representative to the study (the Business Development/Commercial Property Manager) expressed concerns to the consultant and the restaurant's representative (the Executive Director of the Merchants Association) regarding the appraiser's methodology and the comparability of the businesses and properties used for comparison and the methodology of the study work by the appraiser. After the meeting the Manager wrote the appraiser to reiterate her concerns about the study.

The reports, issued in April 1998, concluded that all seven restaurants were paying higher rental rates than "comparable" establishments were paying, both in rent per square foot and as a percentage of sales. The PDA staff and Council members questioned the appraiser's methods and assumptions, especially whether the "comparable" businesses were truly comparable. They felt the appraiser had ignored the concerns raised by the Manager of Business Development.

The Council directed staff to seek additional independent review of the appraiser's methods and results. The staff prepared a review scope of work and solicited commercial real estate experts and appraisers to review the study results in light of the PDA Council's questions. The PDA retained two appraisers (including one that had bid on the original job, but was rejected because of price) and the President of the national Institute for Real Estate Management. All three criticized the study's methods, including its choices of comparable businesses. The PDA Council members of the restaurant committee declined to accept the study results as any basis for going forward with lease negotiations, and so informed the restaurant owners by letter and in a meeting in June 1998. The Council members directed the staff to continue trying to negotiate new leases with the restaurants on an individual basis.

The restaurant owners met with the four PDA Council members in June 1998 to discuss the studies. They felt the PDA should not have taken the reports to anyone else without meeting with the appraiser first. They wanted to schedule a meeting where the appraiser could defend the study to themselves and the PDA. After some discussion and an unsuccessful attempt to schedule a meeting, the PDA Council members decided not to meet with the appraiser; they were convinced the appraiser would just defend the study and that the meeting would not be productive.

The restaurant owners met with the appraiser in February 1999. One PDA Councilmember (who was not a member of the original study committee) also attended the meeting. The owners asked the appraiser to respond to the PDA's criticisms of the study, and the appraiser

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<sup>39</sup> Minutes of 21 January 1998 meeting, PDA Council Executive Committee, item III.B.

did so. Unfortunately, no one at the meeting possessed the real estate appraisal expertise needed to assess the merit of the appraiser's responses.

The Council members declined the restaurateurs' request for arbitration, on both legal and policy grounds. Citing the 1990 court decision that the PDA cannot delegate its authority to manage the Market, the PDA's legal counsel advised the PDA that arbitration of lease rates would be of questionable legal validity. In addition, Council members and the Executive Director expressed the view that the PDA should not allow lease terms to be set by a third party with no responsibility for the overall financial viability or welfare of the Market.

In March 1999 the PDA Council discussed, and rejected, the possibility of hiring an appraiser to conduct another rent study. They felt that if the study concluded that the restaurant's rents were reasonable--which they expected it would--they would have "dueling studies" and be little better off. Rather than spend money on another study, they would prefer to spend it to assist the restaurants with improvements to their premises. PDA staff told us that their negotiations with the restaurants have included proposed rent concessions for owner investments in capital improvements to the premises; commitments to improve adjacent common area services; and percentage rent reductions as incremental levels of additional sales thresholds are met. They report that these represent changes in economic terms for restaurant leases and in some cases, result in short-term reduction of rents, as well as slower increases in future rents. Three of the seven restaurants have signed long term leases with the PDA, including one since the rent studies were completed.

### **Lease Requirements and Restrictions**

Several merchants complained to us about the PDA's operating requirements and restrictions, and the increasing complexity of PDA leases. They believe they should have more freedom to operate their businesses as they like; they especially resent the PDA's mandatory operating hours and sales reporting requirements. On the other hand, new tenants we interviewed were more likely to want the PDA to enforce operating hours and appearance standards more rigorously.

The PDA's lease provisions and operating rules appear to be no more rigorous than those of other public markets, and are less comprehensive than those of the commercial retail shopping centers whose leases we examined. We compared the Market's standard commercial lease with those of three other commercial retail establishments: another landlord in the Market Historical District, a public market in another major city, and a shopping center in Seattle's Central Business District. We found that:

- All typically use a lease term of 5 years for retail food businesses, 3 years for others. Longer terms may be granted if the tenant makes a significant capital investment in the premises.
- All impose percentage rents on gross sales, in addition to base/minimum rent.
- All prohibit assignment of leases and/or sales of businesses without landlord approval.
- None provide for arbitration of landlord-tenant disputes.
- All require merchants to report gross sales on a monthly or annual basis, or both. Only the PDA allows the merchant to choose between three record-keeping systems -- including an option to use paper receipts and invoices without a cash register.
- All require merchants to observe standard operating hours. (The PDA has five different sets of hours, suited to the location and type of business. Also, Market merchants are not required to operate on Sundays.)

- All but the PDA require tenants to carry at least \$1 million worth of insurance. The PDA requires only \$300,000, except for food service businesses (\$1 million).
- Two of the four--including the other public market--prohibit tenants and their employees from parking on the market/center premises. (The PDA does not, despite the fact that parking has been cited as a customer problem since at least 1974.)

We also conducted a telephone survey of six other markets in other major cities. Five are public markets; they range in "age" from less than one year to 65 years. The survey revealed:

- Five have standard commercial lease terms of 3-5 years. The other (privately owned) has only 30-day lease agreements.
- All six require merchants to observe standard operating hours.
- All review proposed business sales and lease assignments.
- Five pass through all common area utility and maintenance expenses. The other intends to but is in its first year of operation and has not determined its average annual expenses.
- Four do not allow tenants or their employees to park on market premises.
- Three charge percentage rent in addition to base rent.
- At least three maintain capital reserve and operating reserve funds. (One person we interviewed wasn't sure.) Another is part of a city General Fund department, so having reserves is not necessary as long as the city is willing to provide funding.

Several Market merchants told us they declined to sign the PDA's lease due to the size and complexity of the document. Apparently it has become much more comprehensive than it was in the PDA's early days. Some merchants are either unwilling or financially unable to hire attorneys to review their leases. (It would be unethical for the PDA's attorneys to advise PDA tenants regarding PDA leases.) This illustrates one of the inherent conflicts between the PDA's need to operate the Market as a successful business entity and its Charter obligation to support small owner-operated tenant businesses.

One possible solution to this problem would be for an independent merchant organization, such as the Merchants' Association, to arrange for relatively low-cost legal advice regarding leases. This assumes that the organization could convince an attorney or law firm to provide a special rate based on volume of business, civic interest, or other reasons. We do not know whether anything of this nature has ever been attempted in the Market.

### **Leases and Holdover Tenancies**

Several merchants told us that the PDA often refuses to renew tenants' leases, and that 40-50 percent of PDA tenants are holdover tenants. (A holdover or "month-to-month" tenancy is created when the tenant continues to occupy the leased premises after the lease has expired, without a new written lease agreement. All the terms and rules of the original lease still apply, but the PDA can terminate the landlord-tenant relationship on 20 days' notice; the tenants can do so with 60 days' notice. The PDA also has the right to increase the monthly base rent by 50 percent when the lease expires, and can increase it again at any time on 20 days' notice.)

In November 1999 the PDA provided us with a computer spreadsheet listing all tenants and their lease expiration dates. We verified the accuracy of the list by comparing a sample of those dates with the dates on the tenants' lease agreements and by surveying a sample of tenants to verify their status.

Our review of PDA lease records revealed that 148 (65 percent) of its 226 commercial and office spaces were occupied by tenants with current multi-year leases in November 1999. (All spaces were occupied.) Another 20 spaces (9 percent) were in lease negotiations; most of these leases expired within the last year.

PDA records show the following reasons for month-to-month tenancy for the 58 merchants (26 percent) on short-term leases as of November 1999:

- 20 were on month-to-month status at the tenant's request or the mutual determination of the tenant and the PDA;<sup>40</sup>
- 28 were on month-to-month status at the PDA's option because of lease compliance concerns – operating hours, record-keeping requirements, maintenance standards, or similar violations;
- 6 were on month-to-month status at the PDA's option because they are located in an area where planned construction is pending; and,
- 4 were on month-to-month status at the PDA's option because of poor sales performance.

PDA staff believe the level of holdover tenancies has been about the same over at least the last nine years; however, they do not keep track of this statistic and do not keep records that would allow them to calculate past ratios of leases versus holdover tenancies.

Some merchants we interviewed suggested that the PDA often refuses to renew leases for tenants with poor sales performance or other problems, as a way of getting those tenants out of the Market. We found that, although the PDA may decline to renew a multi-year lease or refuse to allow a tenant to exercise an option for an additional lease term due to sub-par sales or non-compliance, it usually allows such tenants to remain on month-to-month status indefinitely. The PDA has allowed some tenants to remain on month-to-month status for years despite recurring sales or compliance problems.

### **PDA Expectations of Tenant Sales Performance**

Current management expects each new tenant to establish a business plan that includes target sales levels, and to achieve those target levels as a condition for automatic lease renewal. The PDA also expects established Market businesses to perform on a par with their neighbors and competitors. The PDA recognizes that businesses that perform poorly relative to similar businesses are not paying their share of Market costs, may adversely affect neighboring businesses, and deny other entrepreneurs the opportunity to try operating a business in the Market. The PDA's Commercial Lease Guidelines state:

The PDA's primary obligation is to maintain and enhance the health and mix of uses in the Pike Place Market in accordance with the priorities of the Market Historical District Ordinance and the PDA Charter. The PDA will strive to provide a nurturing environment for the preservation of individual specialty owner-operated businesses identified as these priorities.... However, it is inevitable that businesses may fail to succeed or that a business tenant may not operate their business in accord with sound property management principles.... In such cases, the PDA will expect to first work with the tenant in a cooperative manner to remedy the problem.... The

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<sup>40</sup> These two categories may include merchants who have declined PDA lease offers and decided to stop negotiating with the PDA for a long-term lease.

termination of a tenant's lease for cause is generally a final result of chronic defaults of the lease.<sup>41</sup>

Encouraging existing tenants to meet their projected sales levels should benefit all Market merchants, since underperforming tenants are not bearing their share of the Market's operating expenses, especially common area expenses. However, several of the merchants we interviewed were skeptical of performance standards, and feared that the PDA would use inadequate sales to justify replacing traditional Market businesses with less traditional but more profitable ones.

We concluded that the PDA continues to recruit non-traditional, owner-operated businesses for the Market, rather than pursue more profitable options. The PDA also keeps some businesses in prime locations in the interest of providing a mix of products and services, even though other tenants might be more profitable in those locations. PDA staff told us they have never held any tenant on month-to-month status while searching for a replacement tenant for their premises, and that they have never increased a holdover tenants' rent by 50 percent, as the lease allows them to do. They also said that the PDA has refused to renew leases with fewer than 10 tenants in the last 10 years, and that there were multiple reasons for non-renewal in each case.

The PDA might address the merchants' concern about performance standards by providing more information to the Market community when it declines to renew a lease or takes similar action to address a tenant problem. When made without sufficient explanation, such actions may appear arbitrary to other merchants. If the PDA were to share its reasons for refusing to renew a lease--without revealing any confidential information or otherwise exposing itself to legal action--other merchants might be more comfortable with performance standards and with PDA landlord-tenant operations generally.

## **Sale of Businesses**

The PDA Council must approve all new leases as well as assignments of existing leases to new owners of Market businesses. This requires the PDA staff and Council to review terms of sale of Market businesses. Also, the Market Historical Commission must approve a use certificate for the new owner. Many merchants resent these potential impediments to selling their businesses. Some told us the PDA does not let tenants sell their businesses if the offered sale price is "too high". We found no evidence to suggest that this allegation is accurate.

In reviewing a proposed new lease or lease assignment, the PDA's stated objective is to "assess the ability of the prospective new commercial tenant to succeed and fit into the overall Market."<sup>42</sup> The PDA reviews 1) the financial terms of the proposed sale and the prospective buyer's ability to meet those terms while paying rent; 2) the proposed buyer's credit history and business plan; and 3) the prospective buyer's resume and experience in the type of business they are seeking to purchase.

When the PDA is unsure a buyer will be able to satisfy these requirements, it sometimes approves the lease subject to conditions that address its concerns. For example, the PDA sometimes requires sellers to train inexperienced buyers for several weeks, or requires the

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<sup>41</sup> Lease Administration Guidelines for Pike Place Market Preservation and Development Authority Commercial Property Management Department, 29.

<sup>42</sup> Commercial Property Manager memorandum to "PDA Tenant".

buyer to place some money in escrow to ensure the buyer can make purchase and rental payments.

According to the Executive Director, the PDA Council has rejected only one sale with assignment of lease during the past ten years. The PDA Council rejected the transaction on several grounds: 1) the sale price far exceeded the value of the business, as represented by the retail sales volume of the existing business, so it would have been difficult for the buyer to make enough income to meet purchase and rental payments; 2) the proposed buyers had no verifiable prior experience of businesses ownership or management and insufficient financial resources to meet obligations for rent, payment against the purchase contract, and off-season cash flow for the business; 3) the PDA was unable to substantiate the buyers' credit worthiness; and 4) since the buyers did not speak English, they would have incurred costs to hire staff able to conduct business in English.

No one provided us with any other examples to support allegations that the PDA would reject a business sale if the price were "too high". (The Market Historical Commission rejected at least one sale that had been approved by the PDA Council.)

### **Maintenance Issues**

Some merchants were dissatisfied with custodial and maintenance efforts, especially in common areas. We did not examine this aspect of the PDA's operations; however, we noted that the PDA recently implemented or will implement changes to try to address some maintenance concerns, including:

- New tables and chairs in public seating areas;
- Increased washing of exterior windows of food establishments;
- Special cleaning to remove accumulated grease in the Sanitary Market building;
- Purchasing a lift that will allow employees to clean and paint hard-to-reach areas;
- Improving lighting in the Economy Atrium; and
- Repairing damaged daystall tables.

In addition, merchants often complain to the PDA about the lack of diligence of the PDA in enforcing lease requirements for business operations: operating hours, maintenance of the premises, merchandising, and compliance with use authorization. Such complaints are usually made by tenants who believe their businesses are being hurt by their neighbors' noncompliance. The PDA is most often accused of inadequate enforcement of three types of violations: 1) merchant "hawking" (calling out to potential customers), especially when it causes congestion in common areas; 2) recurring failure of certain tenants to maintain clean and sanitary premises; and 3) tenants not respecting designated operating hours, especially those in the DownUnder area.

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### **PDA COMMUNICATIONS WITH COMMERCIAL AND DAYSTALL TENANTS COULD BE IMPROVED**

The PDA and the Market Community Would Benefit From a Shared Vision for the Market.

One of the most fundamental problems we observed was the lack of a shared vision for the Market between the PDA and its tenants, and among different tenants. As we have described above, we believe the PDA's vision for the Market, as reflected in its policies and practices, is consistent with its Charter and the Historical District ordinance. From our interviews and our observations of Hildt Agreement revision proceedings, we concluded that a significant portion of the Market's tenants believe that the PDA's first allegiance should be to its tenants, rather than to the citizens of Seattle (via the Charter).

In a report prepared recently for the convention and visitors bureau of a major West Coast city, Plog Research described the life cycle of typical tourist destinations. Destinations are usually "discovered" by relatively adventurous travelers who avoid mainstream tourist destinations. They tell their friends about their experiences, and more people visit. As word spreads about the unique destination, it is visited by more travelers--but they tend to be more "mainstream" tourists, who typically spend less time and money at their destinations. As a destination changes to respond to the demands of these tourists, it loses its uniqueness. Adventurous travelers, who typically spend more time and money, lose interest. Then the destination struggles to survive. Plog recommends that destinations try to maintain a balance of uniqueness and mainstream appeal that will keep moderately adventurous travelers interested in the destination.

At meetings with PDA staff, some merchants suggested that the PDA should advertise at conventions and other tourist events and attractions, since many of their current customers are visitors. Several Market merchants told us the PDA should stop trying to compete for produce sales with supermarkets and other farmers' markets, and accept its inevitable "evolution" to a tourists' market. This sentiment is clearly at odds with the Charter and the Historical District ordinance, and with the Market's historical character as Seattle's public market. Furthermore, the experiences of other public markets in this country suggest that shifting to a tourist focus is the surest way to destroy a public market's local character.

Landlords and tenants, merchants and daystall vendors, cannot be expected to have identical business interests; however, we believe the PDA could do more to encourage Market tenants to embrace its vision for the Market. The PDA might benefit by doing more to educate prospective or new tenants about the Market's history, the Historical District ordinance, and the PDA Charter. Perhaps it should require new tenants to attend a brief "class" where staff, PDA Council members, and Market Historical Commission members describe the Market's history and current operation, and respond to questions. Such an activity could help to develop a shared vision for the Market, and reduce new tenants' reliance upon rumors and other tenants' opinions regarding PDA goals and actions.

#### The PDA Should Rely More on its Communications and Marketing Department for Tenant and Media Communications.

The consultant who reviewed the Communications and Marketing Department in 1998 concluded: "PDA management needs to develop a better communications strategy with tenants.... The Communications and Marketing Director should be used as an internal consultant to the PDA Management team and assist other departments with tenant communications."<sup>43</sup>

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<sup>43</sup> Cocker Fennessy, *Pike Place Market PDA: Analysis and Recommendations, Marketing and Communications Department*, 14 April 1998, 4.

We agree with the consultant's recommendation. One PDA letter to merchants stated that "there will be rewards and punishments" for merchants who did or did not participate in a PDA-sponsored recycling training program. Another letter, infamous within the daystall community, threatened to leave flower waste in the daystalls if vendors didn't do a better job of cleaning up after themselves. Arguably, the letter accomplished what it was intended to accomplish--i.e., the flower vendors improved their cleanup efforts--but the public relations cost to the PDA was probably higher than necessary.

Another example involved comments by a PDA staff member, quoted in newspaper articles, about the effect of tourism on the Market's success as a food center. Craft vendors, antique and curio merchants, and booksellers, in particular, derive much of their business from tourists; fresh food vendors do not. PDA staff and Councilmembers told us that they are concerned about the tourist trade overwhelming the fundamental character of the Market as Seattle's public market; however, they believe these businesses and their tourist trade are an essential part of the Market. Unfortunately, that sentiment was not apparent in the newspaper articles in question. Negative comments about the tourist trade are interpreted as evidence that the PDA wants to drive tourists, and the businesses they frequent, completely out of the Market. Those businesses then see the PDA as an adversary, and are skeptical of subsequent PDA actions and proposals.

### PDA Councilmembers and Staff Should Consider Ways to Increase Personal Interaction with Market Merchants.

The consultant also concluded that “the PDA senior staff should be more visible in the Market” and “there is a perception that communication with merchants occurs only through written materials and that more one-on-one interaction is necessary.”<sup>44</sup> Many of the merchants we interviewed echoed this sentiment. In particular, several said that notices of operating hours violations or similar enforcement letters were delivered by mail or by Security staff, rather than Property Management staff. Members of PDA management staff believe that many merchants do not realize how much time they spend in the Market; they are in the Market nearly every day, whereas most merchants and daystall vendors are not.

### The PDA Should Try to Increase Market-wide Communication Among Tenants.

Most Market tenants do not routinely communicate with tenants in other areas of the Market. As a result, they sometimes criticize the PDA for not implementing suggestions they believe would work for them and their close neighbors--e.g., closing all or part of Pike Place to auto traffic--not realizing that their “solutions” would create problems in other parts of the Market. Then they conclude that the PDA is not taking their comments and suggestions seriously.

The PDA has tried to address this problem, with limited success. The PDA publishes monthly newsletters for the daystall, residential, farmer, and merchant communities, and the Executive Director prepares a monthly summary of current events in the Market. The merchant newsletter is distributed with monthly rent statements, and the PDA mails the Executive Director’s summary to anyone who asks to be put on a mailing list. In 1998 the Executive Director and staff began conducting quarterly meetings with merchants in each Market building--a technique they had tried several years ago--but as before, they have not been well attended. The meetings are well advertised, but some merchants are skeptical of the value of the meetings, some are unable to attend at the scheduled times, and others boycott the meetings because they are unhappy with the PDA. Later this year the PDA plans instead to conduct several Market-wide (instead of building- or area-specific) meetings at different times, to increase Market-wide communication among merchants while providing more opportunities for merchants to attend.

PDA staff also post or mail notices and visit tenants to inform them about pending construction and other issues. These notices are also usually available at the PDA’s office in the Market. PDA staff told us they have tried many methods to generate better attendance at building meetings, and to address complaints about PDA communications, but have had little success.

In this regard, we believe our conclusions regarding the importance of thoughtful public process, discussed at pages 30-33, can help improve communications between the PDA and the Market community by helping to rebuild trust. However, we also have some reason to agree with the following observation made by the communications consultant: “Contradictions exist in the findings, especially when it comes to merchant expectations of the PDA and the Communications and Marketing Department. Interviewees want more services from the PDA -- but don’t want to pay for them.”<sup>45</sup>

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<sup>44</sup> Cocker Fennessy, *Pike Place Market PDA: Analysis and Recommendations, Marketing and Communications Department*, 14 April 1998, 4, 8.

<sup>45</sup> Cocker Fennessy, *Pike Place Market PDA: Analysis and Recommendations, Marketing and Communications Department*, 14 April 1998, 4.

The Market's parking promotions provide a good example. Many merchants told us that parking availability and cost are problems for shopping at the Market. Some said the cost of parking in the Market Parking Garage is too high. But if prices are too low, commuters and other non-shoppers will occupy the garage. The PDA's solution has been to keep parking prices at or near market rates, especially during the summer, and sell validation stickers to merchants to give to their customers. By providing these stickers to regular local customers, the merchants should be able to create a *de facto* discount parking rate for them. But only 46 merchants--about 20 percent--used the stickers in 1998. Three merchants gave us the following reasons for not participating in the validation program:

- "The parking validation sticker should be cheaper. The 50-cent stickers cost merchants 45 or 40 cents each."
- "Merchants pay 40-45 cents for each 50 cent parking validation sticker in the current system. The PDA should split the cost 50-50 with merchants."
- "Parking rates should be the PDA's job."

Merchants can purchase \$60 worth of 50-cents-off stickers for \$45. In other words, the merchants actually pay only 35 cents per sticker, which is 75 percent of their value. In contrast, businesses that participate in the Downtown Seattle Association's "Easy Streets" parking validation program pay the full cost of each \$1 token. The participating parking companies redeem each token for 95 cents from the Association, which uses the 5-cent difference to cover the program's administration and marketing costs.

The fact that the Market merchants quoted above overstated the true cost of the validation stickers could indicate insufficient marketing by the PDA to its tenants. Maybe the PDA has not fully explained the validation program's potential to create an unadvertised lower parking rate for regular customers. But the quotes above nonetheless support the consultant's observation that some Market merchants don't want to pay for services that merchants elsewhere expect to pay for.

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## **OTHER ISSUES**

### **PDA Compliance with the State's Open Meetings Act**

At its March 1999 meeting the PDA Council called an unplanned executive session in response to an audience member's letter suggesting that a lawsuit could result if the PDA acted on a resolution being proposed to resolve a Market trademark issue. (The Council took no action during the session.) We subsequently determined that this was probably an inappropriate use of executive session under the state Open Meetings Act. We informed the Executive Director and the chairperson of the PDA Council of our opinion, and asked them to seek their legal counsel's opinion. We recommended that the Council and its committees have a copy of the relevant portion of the Act at their meetings, and that the chairperson specify for the record which exception they are invoking when calling an executive session.

The Executive Director promptly conferred with a PDA attorney, and confirmed that the executive session was not in compliance with the Open Meetings Act. Neither she nor the Council members had understood that a discussion involving potential litigation issues must be a discussion *with PDA legal counsel* in order to qualify as an exception to the Act's open

meetings provisions. (In other words, this provision of the Act gives public boards the same ability to have attorney-client privileged conversations that individuals and private organizations have.)

The Executive Director and the Chairperson responded promptly to prevent the mistake from being repeated. At the April meeting of the PDA Council Executive Committee, a PDA attorney gave a presentation about the Open Meetings Act and proper use of executive sessions. The Council also adopted our recommendation that they have a copy of the Act's list of allowable executive sessions available at its meetings, and that they identify which exception is being invoked.

## **APPENDICES**

## **Appendix I**

### **Pike Place Market Map**

Call or e-mail to request a copy

**Appendix II**

**Pike Place Market PDA Staff  
Organizational Chart**

Call or e-mail to request a copy

**Appendix III**

**Pike Place Market PDA Staff  
Department Function Chart**

Call or e-mail to request a copy

**Appendix IV**

**Office of City Auditor Memorandum  
to City Councilmember Peter Steinbrueck**

TO: Councilmember Peter Steinbrueck

FROM: Jerry Stein, Office of City Auditor

SUBJECT: Pike Place Market PDA Revisions to the Hildt Agreement

I used day stall occupancy data from 1997 and 1998 to develop a computer model that illustrates the effect on craft vendors of the PDA's proposal to give certain farmers a third stall, based on various assumptions that can be chosen by the user. These assumptions include:

- percentage of farmers who qualify for and take a third table;
- number of additional farmers selling in the Market; and
- precipitation level that would prohibit sales from uncovered (outdoor) stalls.

Some of the general conclusions of our model, based on a variety of figures for the variables above, are:

- *Craft vendors who now have sufficient seniority to regularly get one of the 231 Market day stalls would almost never be excluded from the Market, even if many more farmers sell and the percentage of farmers taking a third table is high.* This is because farmers already fill the farm-priority stalls during much of the peak season, and any additional farmers go to overflow space on Pike Place or are excluded from the Market, rather than taking craft-priority stalls.
- *However, some craft vendors who now have enough seniority to be assured of getting a covered stall will lose that assurance, and will then be unable to sell if the weather is bad.* This is certain to occur during the "shoulder" seasons -- just before and after the peak produce seasons -- when the number of farmers in the Market is relatively high and precipitation is more likely than during the peak season.

The number of craft vendors my computer model projects to be "rained out" of the Market depends on what figures are selected for the three variables. We have attached graphs showing the rainout effect under various assumptions. *These graphs illustrate the number of craft persons who were able to sell from covered spaces in 1998 but would have to sell outside under the PDA's third farm stall proposal, on days when precipitation historically would prohibit sales from outdoor stalls.* The graphs are useful only in examining this particular effect; I recommend viewing the model to get a more complete picture of the effect of the third table under a variety of circumstances.

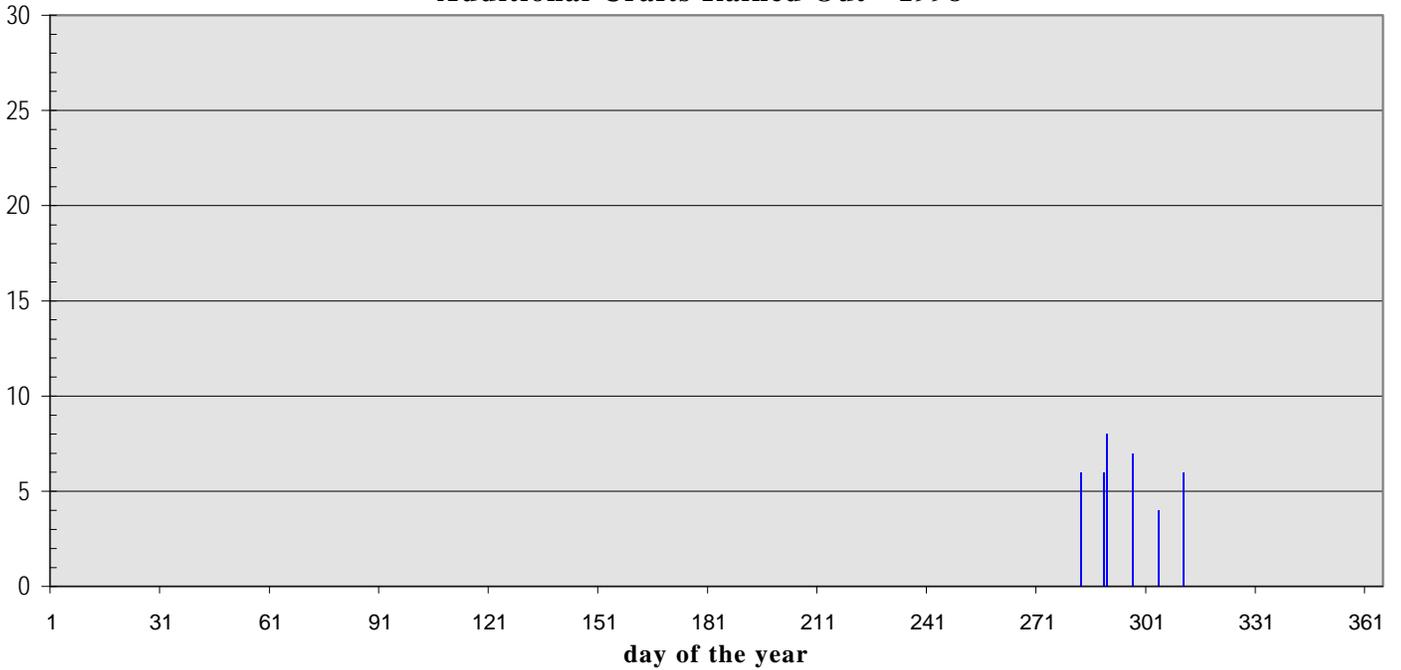
By trying various "rainout" variables in the computer model, we concluded that a level of .07-.08" per day best matches with historical outdoor occupancy data.

PDA staff suggested 15% as a realistic percentage of farmers expected to qualify for a third stall under the original PDA proposal, based on their knowledge of attending farmers' products. Recent revisions have expanded the definition of "fresh produce" to include herbs and eggs; also, the definition of "diversity of fresh produce" and the third stall allocation process have been left to the Daystall Rules and Regulations. Therefore it is difficult to estimate what percentage would qualify for and take a third stall.

Assumptions:

Number of additional farmers: none  
Percentage of farmers taking a third stall: 15%  
"Rainout" level: .07-.08" (same results at both levels)

**Additional Crafts Rained Out - 1998**

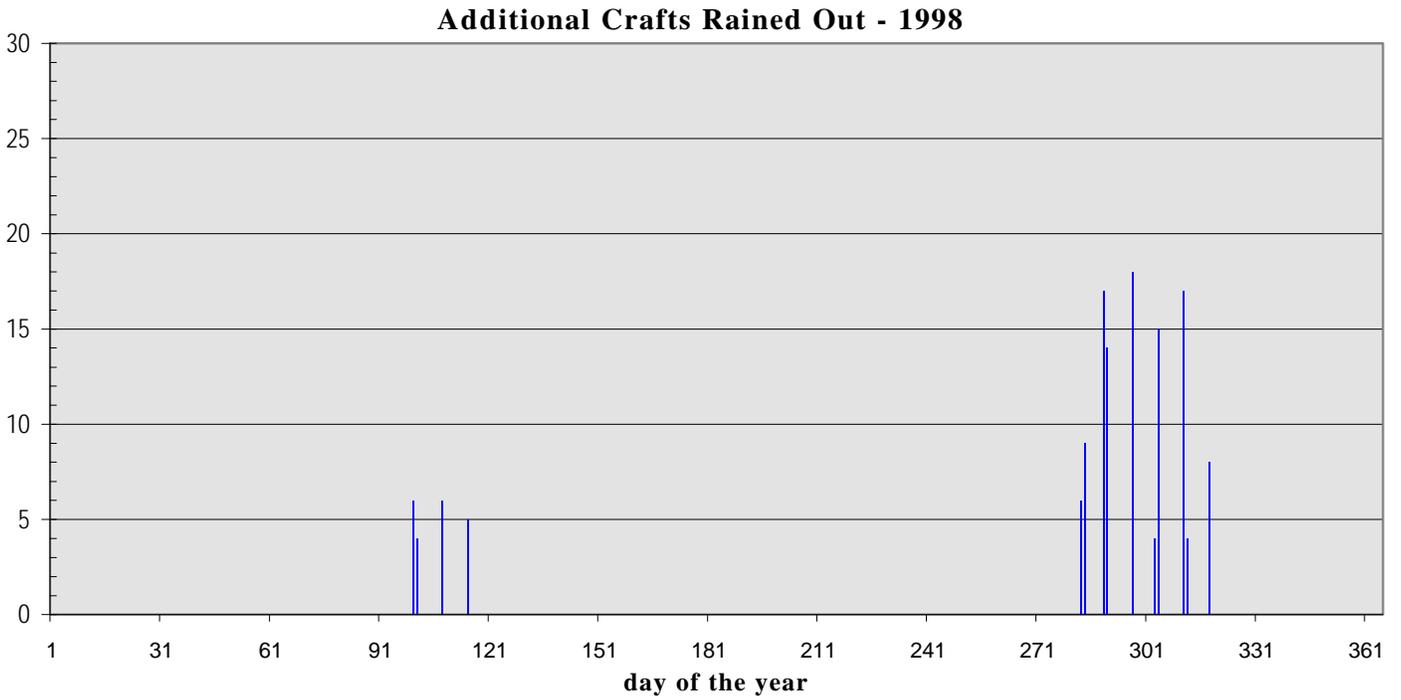


Conclusion:

Between 4 and 8 craft vendors rained out during 6 days in the period October-November.

Assumptions:

Number of additional farmers: none  
Percentage of farmers taking a third stall: 40%  
"Rainout" level: .08"

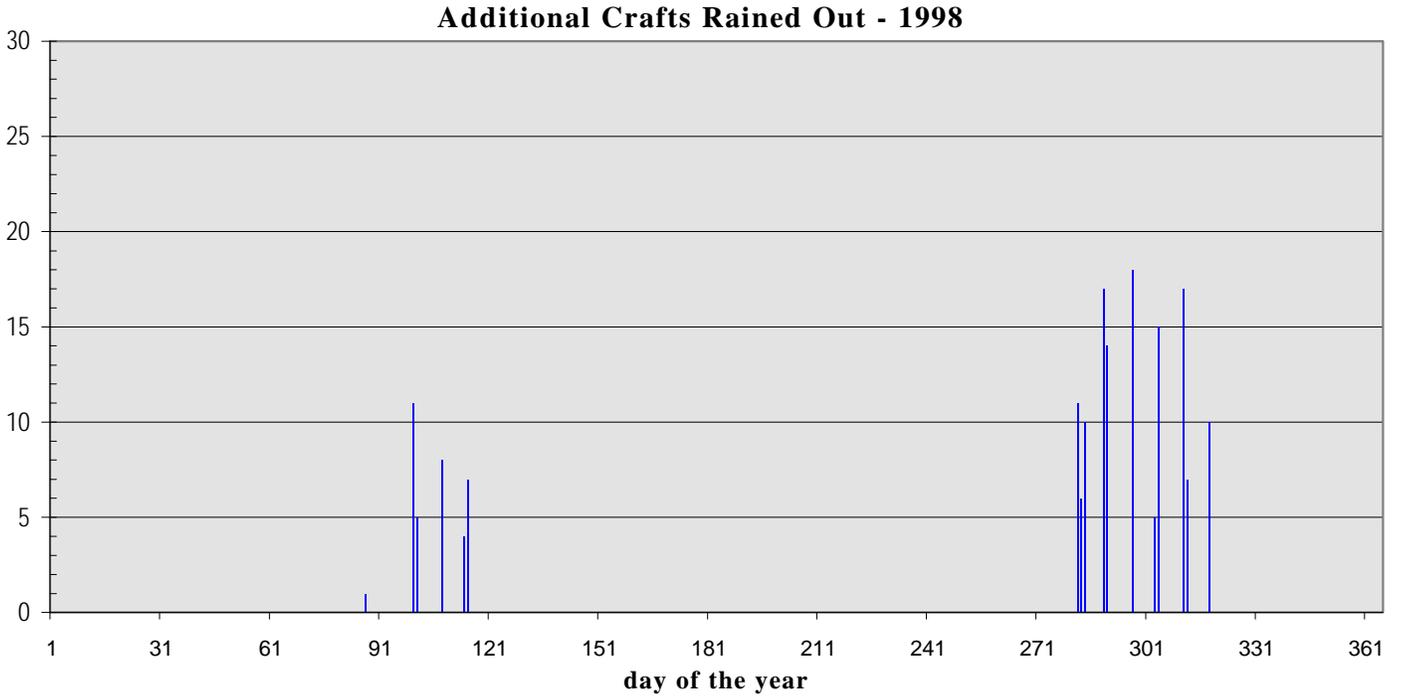


Conclusion:

Between 4 and 6 craft vendors rained out during 4 days in April;  
Between 4 and 18 craft vendors rained out during 10 days in the period October-November.

Assumptions:

Number of additional farmers: 5  
Percentage of farmers taking a third stall: 15%  
"Rainout" level: .075"

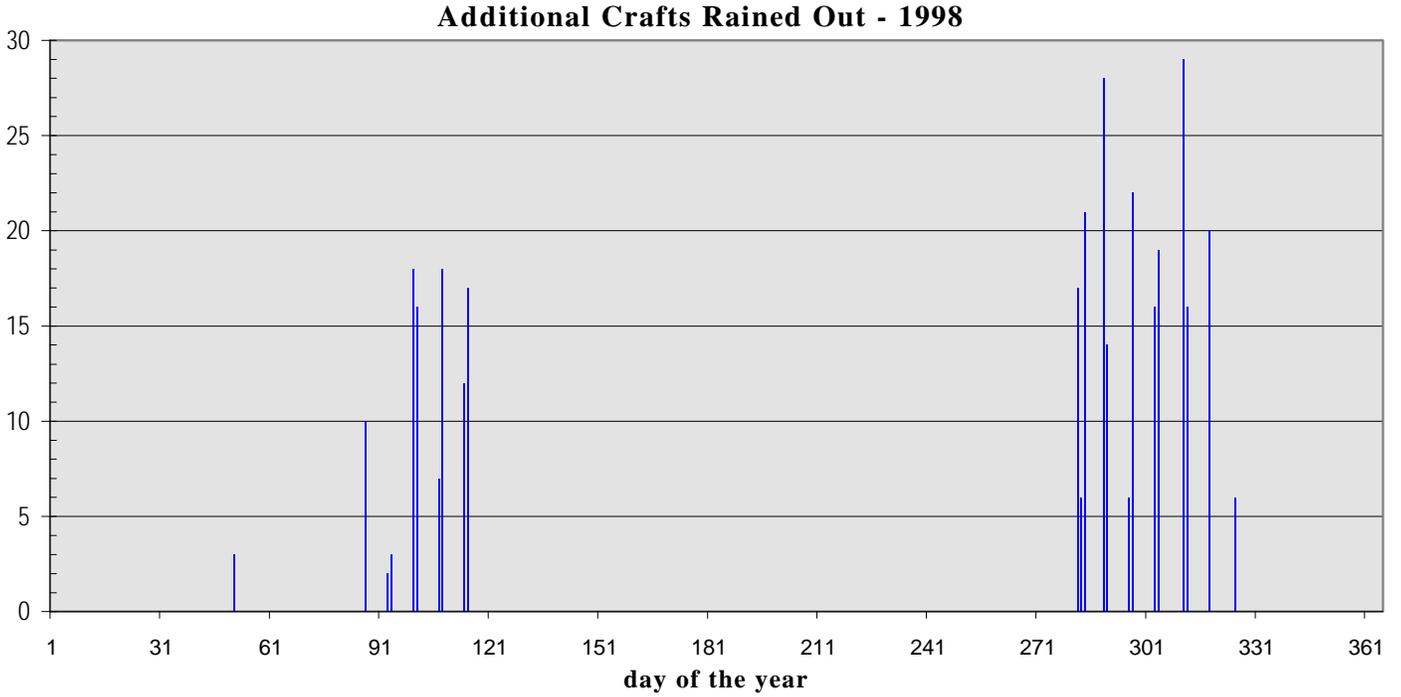


Conclusions:

From 1 to 11 craft vendors rained out during 6 days in the period March-April.  
From 5 to 18 craft vendors rained out during 11 days in the period October-November.

Assumptions:

Number of additional farmers: 5  
Percentage of farmers taking a third stall: 40%  
"Rainout" level: .075"



Conclusions:

Between 2 and 18 craft vendors rained out during 10 days in the period February-April.  
Between 6 and 29 craft vendors rained out during 13 days in the period October-November.

## **Appendix V**

### **Pike Place Market Preservation and Development Authority Response**

(prepared by Carol Binder,  
PDA Councilmember and Acting Executive Director;  
submitted via e-mail)

The PDA has received your audit report and we appreciate the time and effort that the City Auditor has committed to this assignment. We realize that it has not been an easy one. We feel that the City Auditor has gained a good understanding of the complexities and competing demands that those charged with upholding the PDA Charter face on a daily basis. Thank you for this opportunity to respond to your report. Overall, we are satisfied that the City Auditor concludes that the PDA is upholding its Charter mandates in the areas examined.

We are pleased that the City Auditor finds that our interpretation of the Charter and our programs and policies related to the imbalances of daystall products are reasonable. We appreciate his concurrence that local produce is currently underrepresented and his understanding that the changes in the Hildt Agreement were an effort attract more fresh produce to the Market. We are pleased that the City Auditor's independent analysis confirmed our conclusion that craft vendors would rarely be excluded from selling at the Market as a result of the changes and appreciate his additional analysis in this regard. This confirmation had a positive impact on dispelling some of the misinformation surrounding the impact on crafts people selling at the Market.

With regard to the City Auditor's evaluation of the PDA's public process requirements, we feel this analysis could be more balanced. We continue to feel that the central issue was opposition to the provision to allow a third table to farmers rather than the amount of time allowed for public process. Even after the additional time and analysis, public testimony by the DTA and crafts community was still overwhelming opposed to granting a third table to farmers. It was clear throughout the Hildt process and the rules change process that fundamental disagreement on this policy change remained at the heart of the community concern, and no amount of process would have (or did) change that. It is also important to note that this policy change in the Hildt was implemented for the Charter objective to promote the sale of farm produce.

We are pleased that the City Auditor has concluded that our lease policies and practices are consistent with our Charter mandate and that he believes that we are upholding our Charter mission with respect to small and marginal businesses. We also find useful his comparisons of the lease and rent policies of independent landlords and markets. This analysis confirms that our leasing requirements and restrictions are comparable, if not less onerous, than other building owners, centers and markets. However, the City Auditor's suggestion that the PDA provide more information to the Market community when it declines to renew a lease or takes similar action to address a tenant problem is contrary to a long held PDA policy of respecting the privacy of each leasehold tenant and the confidentiality of their business relationship with the PDA.

The PDA agrees that our communication with tenants could be improved. As was observed in the audit report, the PDA has tried to address this problem in many ways; with monthly newsletters, building meetings at various times and places and postings of notices in and around the Market. Open communications has been and will continue to be one of our four key objectives specified in our budget objectives, and as such we will continue to develop ideas and actions to improve in this area.

Overall, the PDA appreciates the time and effort the City Auditor's Office has put in on this engagement. We hope this review addresses the concerns of the City Council with regard to compliance with the Charter mandates of the PDA. We are pleased that the City Auditor determined that the PDA is in compliance with its Charter mandates and that our policies are reasonable in the areas examined. The PDA acknowledges its obligation to improved communication within the community and improved diligence in observing public process requirements. We will continue to work toward improvements in these areas.

The PDA Council and staff take very seriously their responsibility to follow and uphold the mandates of our Charter and to do so in an open and public manner. The PDA will continue to balance the needs of the Market with these mandates guiding our decision making and will continue to evaluate improvements to the process surrounding that decision making.

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**Appendix VI**

**Pike Place Market Constituency  
Response**

PIKE PLACE PUBLIC MARKET  
PRESERVATION AND DEVELOPMENT AUTHORITY  
CONSTITUENCY

To: City of Seattle Auditor's office  
Re: Performance Review of the Market PDA  
Date: November 20, 1999

Auditors,

After more than a year of diligent effort on the part of your office, the Constituency of the Pike Place Market Preservation and Development Authority (PDA) is pleased to read and respond to the performance review report submitted by City Auditor Jerry Stein.

The report clarifies that the PDA shares with the Market Historic Commission stewardship of an important Public asset. It also validates many recurring complaints of long-time Market tenants. It highlights several problem areas which should give Market management a clear outline of needed improvements.

Even though the scope of this review' was necessarily limited, Mr. Stein's thorough research of the issues and fair minded interpretations give us an invaluable document.

Thank you.

Sincerely,

[signatures removed for security reasons]

Theresa Alexander  
Vice Chair

Eric Pollard  
Chair